

(1998) 01 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : C.R. No's. 14, 17 and 82 of 1997

Jugal Raj Gandotra and Another

APPELLANT

Vs

Yashpal Sahni and Another

RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 11 Rule 1

Citation : AIR 1999 J&K 21

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Judgement

Arun Kumar Goel, J.—All these revision petitions have been taken up for disposal together and will be disposed of by a common judgment

as they arise out of the same case pending between the parties before the trial Court. :

2. Brief facts of the cases need to be noticed in order to understand the controversy involved in the case. A suit for ejectment has been filed by

Yashpal Sahni (hereinafter referred to as the 'plaintiff') against M/s. Gandotra Traders (hereinafter referred to as the 'defendants') in the Court of

District Judge, Jammu. Main plea for seeking ejectment against the defendants was that the shop under their tenancy was reasonably required by

the plaintiff as well as his sons for their personal use and occupation and their necessity is comparatively much more greater than the defendants as

till date the plaintiff has been carrying on his business at Srinagar, but now with the changed circumstances and situation prevalent in Srinagar it has

become impossible to carry on trade smoothly and without any hinderance there. Even the sons of the plaintiff are without any job and need

immediate settlement in their lives in order to safeguard their interests in future.

This plea of the plaintiff has been controverted by the defendants in the written statement filed by them. According to them, plaintiff is carrying on number of businesses and, therefore, his requirement was not bonafide and number of other pleas were also raised by the defendants. It was specifically pleaded by the defendants that the plaintiff is running a wholesale glass business in the city of Srinagar at Maghar Mull Baug, Near Jahangir-Hotel, he was also stated to be running his glass business with the help of his son at Srinagar. In addition to this, plaintiff was stated to be running a glass shop in double-storeyed building at Pucca Danga, Jammu just opposite the premises in question where there is a big shop which comprises of two shops, on the ground floor plaintiff was stated to be doing wholesale business with his father under the name and style of M/s. Sahni Glass House and on the first floor of these premises he was stated to be doing wholesale glass business under the name and style of M/s. Sahni Agencies. Other facts were also pleaded in order to controvert the claim made by the plaintiff.

3. Trial Court framed issues in this case on 18-11-1991 which are to the following effect:-

1. Whether the suit is liable to be dismissed for being filed without any cause of action ?OPDs.

2. Whether the suit shop is reasonably required by the plaintiff for his personal use and occupation and his requirement is more than that of the defendants'?OPP.

3. Whether the suit is not maintainable as the plaintiff is not the landlord of the defendants ?OPD.

4. Relief.

4. Record of the case shows that on 10-8-1992. issue No:2. was re-cast and an additional issue No. 2-A was framed to the following effect:-

2. Whether the suit shop is reasonably required by the plaintiff for himself and for his sons for their personal use and occupation and the requirement is comparatively more than that of the defendants ?
..... OPP.

2-A. Whether the requirement of the plaintiff can be met by partial ejectment of the defendants from the suit shop ?

.... O. P. Parties.

5. After framing of the issues plaintiff concluded his evidence and when the turn of the defendants came to summon their evidence, they furnished a

list of as many as 59 witnesses. This was seriously objected to by the plaintiff who preferred Civil Revision No. 137 of 1993 which came up for-

consideration before this Court and vide its judgment dated 9-9-1994, the Court while disposing of the said revision petition held, "On the

foregoing analogy, I, while allowing this revision petition hold that the impugned order in this petition suffers from infirmities and causes miscarriage

of justice. Same is quashed and the learned counsel for the defendants who appeared at this stage, is directed to file the list of ten witnesses, he

proposes to examine after being summoned by the Court. He will indicate against every witness as to for what purpose is that witness proposed to

be produced. He will do so before the trial Court within two weeks from today. Parties shall appear before the trial Court on 26-9-1994. Trial

Court should not sleep over the matter and should utilise all its resources in effecting service of the witnesses. In the case of some of witnesses from

Srinagar or any other place linked with Jammu through air service, their air fare shall be deposited by him in respect of those witnesses and they

will in due course be directed to attend the Court in person under proviso to Rule 19 of Order XVI, C.P.C. However, after the list is exhausted

and the defendant if wants to produce any other witnesses, he will produce them of his own in not more than two sittings which shall be conducted

on two consecutive working days, by the trial Court. The trial Court at the cost of repetition, is directed to proceed in the matter expeditiously

and lose no time in recording the evidence in full.

6. It appears that after the passing of this order in C. R. No. 137 of 1993, evidence of the defendants commenced and impugned order shows

that when it was about to be concluded, defendants filed an application under Order 11, Rule 1, C.P.C. for serving interrogatories to be answered

by the plaintiffs. As many as 20 interrogatories were intended to be served upon the plaintiff to be answered by him out of which those mentioned

at Sr. Nos. 3, 4 and 12 to 18 have been allowed, whereas rest have been declined.

7. Civil Revision No. 14 of 1987 is filed by the defendants against the order

whereby some of the interrogatories had been declined and Civil

Revision No. 18 of 1997 has been filed by the plaintiff whereby he has been called upon to answer the interrogatories referred to hereinabove.

8. So far C. R. No. 82 of 1997 is concerned, it has been filed by the defendants against the order dated 8-7-1997 passed by the trial Court,

whereby application under Order XIII, Rule 2 read with Section 151, C.P.C. for allowing the defendants to place on record the attested copies of

certain documents has been rejected. In this context it may also be appropriate to mention that the defendants had filed another Civil Revision No.

10 of 1996 prior to the present three revision petitions wherein while dismissing the revision petition, it was observed by the Court ""Mr. Sharma

has argued that he wants to place on record some documents which cannot be procured without the assistance of the Court. They are official

documents and ordinarily no copies of such documents are issued, I in exercise of my inherent powers, direct that in case Mr. Sharma or his client

makes an application before the Sales Tax department or any bank for the attested copies of any order or document, the same be issued under

rules without loss of any time and immediately.

9. Shri Kohli, learned Senior Advocate appearing in support of C. R. No. 14 of 1997 as well as in opposition of C. R. No. 18 of 1997 has by

referring to the provisions of Order XI, Rules 1 and 21, C.P.C. urged that purpose of interrogatories is to extract admissions, with the object to

shorten the litigation. According to him, material circumstance and purpose of enacting provisions of Order XI and XII, C.P.C, is to cut short the

matter as well as cost of litigation regarding relevant and material facts so that time of the Court and parties as well as energies and money to be

incurred by the litigant is saved. It was also pointed out by Mr. Kohli that in the instant case, the relevant fact is that the requirement of the plaintiff

is not bona fide and is actuated by extraneous considerations and aimed at getting the defendants evicted from the premises inquestion.

10. On the other hand, Shri Singh, learned counsel for the respondents in C. R. No. 14 of 1997 and in support of C. R. No. 18 of 1977,

controverted all the pleas urged on behalf of the defendants and further referred to the chequered history of this case that with a view to show that

the defendants are out to ensure that the litigation does not come to an end.

According to Mr. Singh, defendants have not hesitated in deploying all means just as well as unjust to ensure that the order passed by this Court in C. R. No. 137 of 1993 is defeated. Filing of interrogatories was an ugly attempt on their part to circumvent and over- reach the order and negative its effect. Another argument urged by Mr. Singh was that the present application is neither bona fide nor is it maintain able.

11. Lastly it was pointed out by Mr. Singh that the plaintiff has concluded his evidence and the defendants were on the verge of concluding the same. Thus, according to Mr. Singh, the revision petition filed by the defendants is liable to be dismissed and the one filed by the plaintiff is liable to be allowed.

12. Reliance was placed Mr. Kohli on a number of cases to which a reference is being made. First case relied was Raj Narain Vs. Indira Nehru

Gandhi and Another, , wherein it was held that questions which may be relevant during cross-examination are not necessarily relevant as

interrogatories. Only questions that are relevant are those relating to 'are matters in question'. The interrogatories served must have reasonable and

close connection with ""matters in question"". Next case which was relied upon is Delhi Vanaspati Syndicate Vs. K.C. Chawala, . A learned single

Judge of this Court has observed as under in this case :-

5. As far the first contention, leave for serving interrogatories on the petitioner is implicit in the application itself that was made by the respondent

in that behalf. The Court was not supposed to serve these interrogatories on the petitioner with a direction to answer the same as an automaton.

Nor has the Court in fact done that. It has applied its mind to the facts and circumstances of the case and permitted the respondent to serve the

interrogatories on the petitioner for being replied. The leave contemplated by Rule 1 was, therefore, not only sought from the trial Court but was

also granted by it.

6. It is true that a party is not entitled to require its adversary to answer interrogatories, the effect whereof would be to enable it to know the facts,

which exclusively constitute the evidence of his opponent's case. But, it is equally true that it can administer interrogatories to its opponent, to

obtain admissions from him to everything that on the pleadings of the parties is material for the decision of the case, with the object of facilitating the

proof of its own case, as also saving the costs which it may otherwise have to incur on adducing evidence to prove the necessary facts. As

observed by their Lordship in *Raj Narain Vs. Indira Nehru Gandhi and Another*, :
""The interrogatories must have reasonably close connection with

matters in question"". The questions sought to be answered by the petitioner, there can be no manner of doubt did have such connection with the

issues raised and if the petitioner's answer to those questions were to constitute his admissions on material facts then the respondent need not have

adduced any evidence to prove his case. I fail to understand as to how these questions can be said to be facts that exclusively constitute the

evidence of the petitioner's case.

13. Mr. Singh, learned counsel for the plaintiff has also placed reliance on this judgment while arguing the case on behalf of the plaintiff. A Full

Bench of Punjab and Haryana High Court in *Rameshwara Nand Vs. Shri Madho Ram and Another*, , while considering the matter relating to

inspection of ballot papers in an Election Petition observed as under :-

(10) xxx xxx Moreover, even under the Code of Civil Procedure, discovery, production and inspection can be ordered on a proper case being

made out at a stage well before the leading of evidence. Otherwise the real object of such discovery, production and inspection may be defeated.

14. So far the judicial proceedings to which reference has been made hereinabove, broader principle which emerges on examination thereof is that

the interrogatories can be ordered to be served upon the opponent to obtain admissions from him, but those have to have material bearing on the

case itself and further a party is not entitled to call upon its opponent to answer such an interrogatory which would tend to enable it to know the

facts which constitute the opponent's evidence. Further simply because the party, who intends getting interrogatory served upon and answered by

the opponent has other means of proving the fact in question by itself would not be a ground to decline the prayer made for service of

interrogatories.

15. In the background of the aforesaid legal position, present case needs to be examined. As already noticed, parties were not at variance that the

evidence of the defendants was on the verge of being concluded when the application to serve interrogatories was filed by them. Looking to the

rigours of the judgment passed in C. R. No. 137 of 1993, trial Court should have exercised its discretion with utmost restraint and circumspection

which this Court feels it did not do. This Court is further of the view that the defendants are out to protract and consequently delay the decision of

the case. Though it cannot be said that law prohibits a party to have recourse to procedural law, but still court has to be cautious and is to be

guided by other factors existing on file when the matter comes up. If the prayer made by the defendants is allowed, the result would be disastrous

as its consequence would be to tell the plaintiff that he may do anything to expedite the case and even the High Court may go on passing any order,

still the defendants by judicial process will ensure that the orders passed by the High Court are not allowed to be carried out in the letter and spirit.

This can never be the intention of any provision of law. In the background of this case, trial Court failed to exercise jurisdiction vested in it while

partly allowing the interrogatories filed by the defendants who have filed C. R. No. 14 of 1997 and against which order plaintiff rightly aggrieved,

who has filed C. R. No. 117 of 1997. Trial Court has further committed gross illegality as well as material irregularity in passing the impugned

order. That being so, C. R. No. 14 of 1997 filed by the defendants is hereby dismissed and C. R. No. 18 of 1997 filed by the plaintiff is allowed

with the result that the application filed by the defendants for effecting service upon the plaintiff the interrogatories for being answered by him

stands dismissed in its entirety. Defendants shall pay costs to the plaintiff in both the revision petitions which are fixed at Rs. 2,000/- in all. It is

made clear that the payment of these costs shall be a condition precedent before further prosecution of the case on behalf of the defendants in the

Court below. 16. Now, coming to the merits of C. R. No. 82 of 1997. When this case was taken up, Shri J. P. Singh, learned counsel for the

plaintiff very fairly submitted that he has instructions to submit that in case the defendants produce documents which are certified copies of some

orders, his clients shall have no objection to those being taken on record in accordance with law. In the face of this statement made on behalf of

the plaintiff, it is ordered that in the event of documents being filed by the defendants, those will be taken on record in accordance with law on the

next date of hearing fixed by this Court. Revision petition stands disposed of in these terms. Costs on the parties. Parties through their learned

counsel are directed to appear before the Court below on 2-2-1998 when certified copies of documents would be filed as also costs would be paid by the defendants to the plaintiff. Evidence of defendants will be examined by the trial Court strictly in accordance with the mandate of this Court in C. R. No. 137 of