

(2011) 04 MAD CK 0038

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 598 of 2009 and M.P. No. 1 of 2009

Mrs. Savithri

APPELLANT

Vs

Karunya Educational Trust and Karunya Institute of
Technology and Science

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2011) 04 MAD CK 0038

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : Kalyanasundaram, for the Appellant; A.V. Packianathan, for the Respondent

Final Decision : Dismissed

Judgement

K. Mohan Ram, J.—The Plaintiff in O.S. No. 1791 of 2005 on the file of the Principal District Munsif Court, Coimbatore is the Petitioner in

the above civil revision petition.

2. In the said suit, the Defendants, who are the Respondents herein, were set ex parte on 19.6.2006. To set aside the order setting the

Respondents herein ex parte, they filed an application in IA. No. 1361 of 2006. The affidavit was sworn to by one Mr. Sundararaj, trustee of the

Karunya Educational Trust. In the affidavit filed in support of the said application, it has been stated that when the suit was posted on 19.6.2006

for filing counter in IA. No. 2059 of 2005 and written statement as a last chance the Respondents had obtained all necessary particulars and were

planning to meet their counsel a week prior to the date of hearing. It has been further stated that but, all of a sudden, he fell sick with severe viral

fever and hence, could not meet his counsel. As he was aged about 82 years, the written statement could not be filed.

3. The said application was contested by the Petitioner herein.

4. Pending IA. NO. 1361 of 2006, the Petitioner herein filed IA. NO. 3005 of 2007 under Order XI Rules 1 and 2 read with Section 151 of the

CPC seeking permission to deliver the accompanying interrogatories to the Respondents.

5. This application was contested by the Respondents herein and the Court below, ultimately, dismissed the same. Being aggrieved by that, the

Petitioner is before this Court.

6. learned Counsel for the Petitioner submitted that in the affidavit, it has been stated as if the deponent of the affidavit namely Mr. Sundararaj fell ill

with severe viral fever. But, he had not stated about the nature of the viral fever nor stated the name of the doctor, who had treated him. It has also

not been stated as to when he recovered from illness. Hence, the following interrogatories were sought to be issued:

i. Where did you take medical treatment for the severe viral fever stated in your affidavit filed in support of IA. No. 1361 of 2006?

ii. When did you fall sick and when did you recover from your illness?

iii. How did you find out that you were affected with viral fever?

iv. Who diagnosed that you were affected with viral fever? And

v. What is the type of viral fever you were affected with?

7. A counter affidavit has been filed by the Respondents wherein they have stated that the medical certificate has been produced before the Court

below, which gives the details of illness and while so, five questions were framed with regard to the same issue only to complicate the issue. It has

been further stated that the doctor's certificate sufficiently answers all the queries raised. It has also been stated that the deponent of the affidavit

fell sick on 13.6.2006 and recovered on 21.6.2006. Thus, all the queries have been answered in the counter itself.

8. Considering the rival contentions, holding that the present application has been filed only for the purpose of dragging on the proceedings and that

the counter itself contains all the answers for the queries, the Court below dismissed the same. Being aggrieved by that, the Petitioner is before this

Court.

9. learned Counsel for the Petitioner reiterated the averments contained in the affidavit filed in support of the present application and contended

that since the affidavit filed by the Respondents is bereft of details, the interrogatories were sought to be issued.

10. Countering the said submissions, learned Counsel for the Respondents submitted that as rightly pointed out by the Court below, the counter

statement itself contains all the answers with regard to the queries raised by the Plaintiff. Therefore, the Court below rightly dismissed the present

application. According to the learned Counsel for the Respondents, it is an attempt on the part of the Petitioner to further drag on the proceedings.

11. I have considered the aforesaid submissions of the learned Counsel on either side and perused the materials available on record.

12. For better appreciation of the contentions of the parties, it will be useful to extract Order XI Rule 1 of the Code of Civil Procedure, which

reads as follows:

Discovery by Interrogatories:

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 person is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose : Provided also 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.

13. A reading of the above shows that the interrogatories can be delivered in writing for examination of the opposite parties or anyone or more of

such parties in a suit. The said rule does not provide for issue of interrogatories in an interlocutory application, the interlocutory application has to

be disposed of in a summary manner. Therefore, in a summary proceedings the issue of interrogatories is not permissible. On this short ground

alone, the present application filed by the Petitioner could have been dismissed. But, the Court below has given further reasons to dismiss the

same.

14. As rightly contended by the learned Counsel for the Respondents, all the queries sought to be raised by the Plaintiff have been sufficiently

answered. This has also been noted by the Court below while dismissing the present application. The proviso to Order XI Rule 1 makes it clear

that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant and therefore, as the interrogatories sought

to be issued do not relate to the matter in question in this suit, the same cannot be issued. In the considered view of this Court, the Court below is

right in holding that filing of the present application by the Petitioner is only an attempt to drag on the proceedings. I do not find any reason to

interfere with the order passed by the Court below.

15. For the aforesaid reasons, the above civil revision petition is dismissed. No costs. Consequently, the above MP is also dismissed.

16. Considering the fact that the suit is of the year 2005, the Court below is directed to dispose of the suit on or before 31.8.2011.