

(2007) 11 AP CK 0023
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3850 of 2007

Mudimela Konda Reddy

APPELLANT

Vs

Gona Nagi Reddy and Others

RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 10, Order 11 Rule 11, Order 11 Rule 12, Order 11 Rule 13
Constitution of India, 1950 — Article 227

Citation : (2008) 2 ALD 66 : (2008) 2 ALT 17

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : S.R. Sanku, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri K. Ramesh, representing Sri S.R. Sanku, learned Counsel for the revision petitioner. Though the respondents had been served, none represents the respondents.

2. This Court ordered notice before admission on 05.11.2007. The petitioner as plaintiff filed the present civil revision petition under Article 227 of the constitution of India being aggrieved of an order made in I.A. No. 126 of 2006 in O.S. No. 9 of 2006, dated 11.06.2007. The said application was filed under Order 11 Rules 8 and 11 r/w Section 151 of the CPC (hereinafter in short referred "the Code" for the purpose of convenience) praying for a relief to direct the respondents to report to the Court about the plinth area of respective portions and the floors in their occupation to whom they had leased out and how much rent they have been collecting and how much area is in their personal occupation etc., and the other particulars to enable the petitioner to claim mesne profits and pass such other suitable orders. The learned Judge referred to the judgment in Kuchimanchi Subba Rao v. Kanchana Prabhakara Rao 2006 (1) LS 465 and came to the conclusion that the application made is not in accordance with law and

accordingly, dismissed the same. Aggrieved by the said order, the present civil revision petition is preferred.

3. Order XI of the Code deals with the discovery and inspection and Order XI Rule 1 of the Code deals with discovery by interrogatories. Order XI Rule 2 of the Code deals with the particular interrogatories to be submitted. Order XI Rule 3 of the Code deals with costs of interrogatories. Order XI Rule 4 of the Code dealing with form of interrogatories specifies that interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

Form Nos. 1 & 2 of Appendix C of the Code are as hereunder:

DISCOVERY, INSPECTION AND ADMISSION NO.1 ORDER FOR DELIVERY OF INTERROGATORIES (Order XI, Rule 1) In the Court of Civil Suit No. of 19../20.. A.B..... ..Plaintiff. against C.D.E.F. and G.H. ..Defendants. No.2 INTERROGATORIES (Order XI Rule 4) (TITLE AS IN NO.1, SUPRA) Interrogatories on behalf of the above-named (plaintiff or defendant C.D) for the examination of the above-named (defendants E.F. and G.H. or plaintiff)

1. Did not, etc.

2. Has not etc., etc., etc., etc.,

(The defendant E.F. is required to answer the interrogatories numbered....)

(The defendant G.H. is required to answer the interrogatories numbered....)

Rule 6 of Order XI of the Code deals with objections to interrogatories by answer. Rule 7 of the said order deals with setting aside and striking out interrogatories. Rule 8 of the said order deals with affidavit in answer, filing. Rule 9 of the said order dealing with form of affidavit in answer states that an affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

Form No. 3 of Appendix C of the Code is as hereunder:

No. 3 Answer to Interrogatories (Order XI Rule 9) (Title as in No. 1, supra)

The answer of the above-named defendant E.F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E.F., make oath and say as follows:

1.}

} Enter answer to interrogatories in paragraphs numbered consecutively.

2.}

3. I object to answer the interrogatories numbered...on the ground that (state grounds of objection).

Order XI Rule 11 of the Code deals with order to answer or answer further, reads as hereunder:

Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by viva voce examination, as the Court may direct.

Further, Rule 13 of the said order dealing with affidavit of documents, reads as hereunder:

The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

Form No. 5 in Appendix C is as hereunder:

No. 5 Affidavit as to Documents (Order XI, Rule 13) (Title as in No. 1, supra)

I, the above-named defendant C.D., make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the First Schedule hereto.

2. I object to produce the said documents set forth in the second part of the First Schedule hereto(state grounds of objection)

3. I have had but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.

4. The last-mentioned documents were last in my possession or power on (state when and what has become of them and in whose possession they now are)

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said First and Second Schedules hereto.

4. In the judgment cited 2006 (1) Law Summary 465 supra, the learned Judge had referred to Koduri Krishnarao Vs. State of Andhra Pradesh, Hyderabad, and Babbar Sewing Machine Company Vs. Trilok Nath Mahajan, and held as hereunder:

3. The procedure for discovery and inspection is ordered in Order XI. Rules 1 to 11 and Rules 21 to 23 deal with interrogatories, whereas Rules 12 to 20 deal with procedure for discovery of documents. Insofar as interrogatories are concerned, the law provides for three stages. In the first stage, the plaintiff or the defendant has to obtain leave of the Court for delivering interrogatories in writing on a defendant or defendants or the plaintiff or plaintiffs, as the case may be. Such interrogatories had to be separately served on each person requiring to answer. After obtaining permission from the trial Court, the interrogatories are to be served in Form No. 2 in Appendix-C on the person who is required to answer. The person receiving interrogatories is required to answer by way of an affidavit (See Rule 8 of Order XI). In second stage, if a person on whom interrogatories are served does not comply with by filing affidavit in answer to interrogatories, the plaintiff or the defendant who obtained leave of the Court to serve interrogatories has to again file another application under Order XI Rule 11 of CPC. Such application can be filed when the person omits to answer interrogatories or answers interrogatories insufficiently. At that stage, the Court can compel the person to answer interrogatories by passing an order either requiring to answer the interrogatories by affidavit or by vis-vis. In case such an order is not complied with, the same would result in penal consequences which can neither be dismissal of the suit or striking off the defence. That is the final stage, which is provided under Order XI Rule 21 CPC, which reads as under.

Order XI Rule 21. Non-compliance with the order for discovery (1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if, a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

2. Where an order is made under Sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.

4. The above rule can be enforced only when a party fails to comply with an order to answer interrogatories. Granting of leave under Rule 1 does not amount to passing order to answer interrogatories. At the first stage the Court merely grants leave to party to serve interrogatories to other party and no order as such is passed compelling to answer the interrogatories. Therefore, as a condition precedent for exercising power under Order XI Rule 11 of CPC there ought to have been order under Rule 11. Further, while passing an order either dismissing suit or striking off defence the trial Court is bound to issue notice to the parties and afford a reasonable opportunity of being heard.

5. In *Koduri Krishna Rao v. State Of Andhra Pradesh*, dealing with Order XI Rule 21 of CPC a Division Bench of this Court held that the trial Court can invoke

penal provisions of Rule 21 only if there had been an order to answer interrogatories or discovery or for inspection of documents under Rules 11, 12 and 18 of Order XI. In *Babbar Sewing Machine Co. v. Tirlok Nath*, the Supreme Court held that no order striking out defence should be made unless there has been obstinacy or contumacy on the part of the defendant or willful attempt to disregard the order of the Court. The relevant observations of the Supreme Court (see placitum) are asunder:

An order striking out the defence under Order 11, Rule 21 should be made unless there has been obstinacy or contumacy on the part of the defendant or willful attempt to disregard the order of the Court, to produce the documents. Even assuming that in certain circumstances the provisions of Order 11 Rule 21 must be strictly enforced, it does not follow that a suit can be lightly thrown out or a defence struck out, without adequate reasons. The test laid down is whether the default is willful. In the case of a plaintiff, it entails in the dismissal of the suit and, therefore, an order for dismissal ought not be made under Order 11 Rule 21, unless the Court is satisfied that the plaintiff was willfully withholding information by refusing to answer interrogatories or by withholding the documents which he ought to discover. In such an event, the plaintiff must take the consequence of having his claim dismissed due to his default, i.e., by suppression of information which he was bound to give. In the case of the defendant, he is visited with the penalty that his defence is liable to be struck out and to be placed in the same position as if he had not defended the suit. The power for dismissal of a suit or striking out of the defence under Order 11 Rule 21, should be exercised only where the defaulting party fails to attend the hearing or is guilty of prolonged or inordinate and inexcusable delay which may cause substantial or serious prejudice to the opposite party.

6. In this case, the sequence of events would show that first respondent filed I.A. No. 1194 of 1999 on 08.11.1999. The trial Court passed order on 29.12.1999 granting leave to the first respondent to serve interrogatories on first defendant and subsequently closed the said application being I.A. No. 1194 of 1999 by docket order dated 15.02.2000. Subsequently, the first respondent did not move any application under Order XI Rule 11, but straightaway filed an application being I.A. No. 269 of 2000 on 06.04.2000. Without noticing the legal position, the trial Court passed orders on 14.08.2000 striking off the defence of the first defendant. Therefore, the impugned order suffers from grave error apparent on the face of record and the same cannot be sustained.

In *P. Balan Vs. Central Bank of India, Calicut*, it was held that 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.

5. It is needless to say that the petitioner is expected to follow the procedure as contemplated under the provisions of Order XI of the Code. In the light of the reasons recorded by the learned Additional District Judge, this Court is of the

considered opinion that the impugned order does not suffer from any illegality whatsoever and accordingly, the Civil Revision Petition shall stand dismissed. No costs.

However, this order may not come in the way of the revision petitioner from moving appropriate application in this regard in accordance with law.