

(1946) 12 CAL CK 0008
In the Calcutta High Court
Case No : Suit No. 1427 of 1945

Nanda Kumar Burdhan and Another

APPELLANT

Vs

The Governor-General in Council

RESPONDENT

Date of Decision : 10-12-1946

Acts Referred:

Citation : (1946) 12 CAL CK 0008

Judgement

Das, J.—This is an application by the Plaintiff under Or. 11, r. 11 of the CPC for an order directing the Defendant to give further and better answers to certain interrogatories delivered to him by the Plaintiff with the leave of the Court. The Plaintiff filed this suit on August 27, 1945, for the recovery of Rs. 5,865 as damages, or, in the alternative, for an enquiry into damages and decree for such sum as this Court may think proper. The cause of action alleged in the plaint is as follows: A firm of the name of Thakur Singh Haran Singh delivered at Maga Tahsil to the North Western Railway authorities 402 bags of onions for carriage from Maga Tahsil to Howrah. The consignment was booked over the North Western and the East Indian Railways from Maga Tahsil to Howrah under railway receipt No. 725689 dated July 12, 1944. The goods were booked under risk note form A and B. The railway receipt was endorsed over in favour of the Plaintiff, and the railway authorities are alleged to have been duly notified of such endorsement. The goods were delivered to the Plaintiff on August 14, 1944, in a damaged condition. The damage was assessed by the Railway Claims Inspector at 70 per cent in respect of 31 bags and 60 per cent in respect of the balance of 371 bags. The Plaintiff's case is that this damage was caused by the failure of the Railway Administrations to deliver the goods within a reasonable time and that this failure arose from the misconduct of the servants of the Railway Administrations in wrongfully detaining and/or misdirecting the said consignment.

2. The defence is principally founded on the risk notes and it is pleaded that it was declared by the consignor that the consignment was in a bad condition and/or liable to damage or wastage in transit, and the consignor agreed to hold the Railway Administration harmless and free from all responsibilities for the

condition in which the said goods might be delivered at destination and for any loss arising from the same except upon proof that such loss, arose from misconduct on the part of the servants of the Railway Administration. The delay in delivery of the goods is sought to be explained in para. 7 of the written statement. It is said that the goods had been loaded at Maga Tahsil in wagon No. 13194, which was duly sealed and despatched on July 12, 1944. The wagon arrived on July 13, 1944, at Chowapail Station on the N. W. Railway where it was detached for hot axle. The consignment was consequently detained at Chowapail for a period between 13th to 21st July, 1944. The wagon No. 13194 was found on examination to be unfit for further journey, and it became necessary to tranship the consignment to a wagon bearing No. 13086. The last-mentioned wagon was despatched from Chowapail on July 21, 1944. On August 4, 1944, the wagon arrived at Asansol where it was found to need repairs. After repairs it became fit and available for further movement, and it left Asansol in the early hours of August 6, 1944, and arrived at Howrah on August 7, 1944, when the goods were available for delivery. Para. 9 of the written statement after denying that there was any failure or neglect on the part of the Railway Administrations as alleged in the plaint, concludes as follows:

This Defendant states that the damaged condition revealed on the said survey is attributable to the existing bad condition of the said goods when tendered for carriage as aforesaid and to the defective packing rendering the said goods liable to damage or wastage in transit.

3. In para. 10 the detentions and the consequent delay were attributed to causes and circumstances beyond the control of the Railway Administrations.

4. From what I have stated it is fairly clear that prima facie the Defendant is protected by the risk notes. In order to succeed the Plaintiff must bring the case within the exception provided by the risk note, namely, that the loss arose from the misconduct of the railway servants. This the Plaintiff seeks to do by alleging that the non-delivery within a reasonable time arose from the misconduct of the railway servants in wrongfully detaining and/or misdirecting the consignment. The defence seeks to explain away the delay by attributing it to causes beyond its control.

5. The principal issue in the case will, there fore, be whether the loss alleged to have been suffered by the Plaintiff was caused by the misconduct of the railway administrations in wrongfully detaining and/or misdirecting the consignment.

6. On June 6, 1946, the Plaintiff took out a summons for leave to deliver certain interrogatories to the Defendant. The proposed interrogatories were set out in an annexure to the affidavit in support of that summons. The Defendant appeared and opposed that application. In the affidavit in opposition to that application it was contended that the proposed interrogatories did not relate to matters in question in the suit and were irrelevant and that the Plaintiffs were seeking to administer the interrogatories with a view to ascertain the evidence by which the

Defendant would prove his case and to fish for facts which constitute exclusively the evidence of the Defendant's case. In para. 5 of the affidavit in opposition it was submitted that the Court should be pleased to refuse leave to the Plaintiffs to deliver the interrogatories as the same were prima facie irrelevant, unnecessary, prolix, oppressive and/or were an abuse of the process of the Court. Clough, J., after hearing both parties acceded to the application and gave leave to the Plaintiff to deliver all the proposed interrogatories.

7. The interrogatories were thereafter delivered, and the Defendant on November 11, 1946, filed an affidavit. It appears from that affidavit that the Defendant has answered only some of the interrogatories and has declined to answer the rest on the ground that they are prolix, oppressive, unnecessary, and relate to facts which constitute exclusively the evidence of the Defendant's case and have been exhibited unreasonably and vexatiously. They are characterized to be prolix, oppressive and unnecessary and of a fishing nature.

8. Mr. Dey appearing in support of this application has put forward a preliminary point that the Defendant had objected to the delivery of the interrogatories on the same grounds on which he is now refusing to answer the same. Mr. Dey's argument is that all these grounds of objection were considered at some length by Clough, J., and the learned Judge overruled those objections and gave leave to the Plaintiff to deliver the interrogatories. In these circumstances, according to Mr. Dey, the objections cannot be again reagitated.

9. I was somewhat attracted by this argument. The scheme of Or. 11 appears to indicate that the application for leave to administer interrogatories is, as a rule, to be made ex parte. All that the Court is concerned at that stage is whether the proposed interrogatories do or do not relate to any matters in question in the suit and whether they are relevant to the issues in the suit. After the leave is granted and the interrogatories are delivered pursuant to such leave, it is open to the party sought to be interrogated to object to answer any of them on the grounds set forth in Or. 11, r. 6. [See *Sham Kishore Mundle v. Shoshibhoosun Biswas* I. L. R. (1880) Cal. 707]. According to Chap. XI of the Rules of this Court, however, an application for leave to deliver interrogatories has to be made on summons to all parties sought to be interrogated. This gives an opportunity to such parties to appear before the Court. The advantage of this procedure is two-fold. First of all, it gives an opportunity to the party sought to be interrogated to convince the Court that the proposed interrogatories are irrelevant in that they do not relate to any matters in question in the suit and should not be allowed. In the next place, it gives an opportunity to the party sought to be interrogated to give particulars or to make admission or to produce documents relating to the matters in question, so that there may be no occasion for delivering any interrogatory to him or for him to answer the same as indicated in Or. 11, r. 2, as Mr. Dey contends that in view of our present practice the decision in *Sham Kishore Mundle's case* I. L. R. (1880) Cal. 702 is no longer applicable. He maintains that the party sought to be interrogated, having had this opportunity

to object to the proposed interrogator and the Court having rejected his contentions, the matter in a way becomes *res judicata* and the party cannot decline to answer the interrogatories on the very same grounds on which he opposed the application for leave to deliver the interrogatories. This argument at first impressed me; but after hearing the lucid arguments of Mr. S.K. Dutt and the cases relied on by him I am satisfied that there can be no question of *res judicata* in a matter of this description. On the first application for leave to administer interrogatories the Court is only concerned with the question whether such leave should be granted. The party sought to be interrogated may object to that application on certain grounds, but that objection is directed to induce the Court not to grant leave to interrogate. At that stage the question whether there will be any objection to answer the interrogatories when the Court grants leave to the applicant to deliver the same is not in issue at all. It is incorrect to say that "the Judge by allowing these interrogatories predetermines that there is no objection to answering them." [Per Lindley, L. J., in *Peek v. Ray* (1894) L. R. 3 Ch. 282 at 286.]. In the words of Lord Justice Lopes in the same case at p. 287 "an allowance of interrogatories by a Judge does not preclude an objection being taken in the way provided for under Or. 31, r. 6." To the same effect are the observations of Lord Justice Kay at page 289 where the learned Judge says that "the allowance of an interrogatory by a Judge although he goes through the interrogatory and strikes out part and allows other parts to remain, means no more than this-I allow these interrogatories subject to any objection which the person to whom they are addressed may have a right to make, that objection to answer being pointed out by Or. 31, r. 6 and notwithstanding my allowance he may make the objection just as though I had not allowed it." ". These observations, in my opinion, completely answer the preliminary point in my judgment. Our present practice has made no substantial change in this respect. I shall, therefore, have to examine the answers to the interrogatories and deal with them one by one and come to a decision as to their sufficiency under Or. 11, r. 10 of the Code.

10. The interrogatories delivered are grouped into four parts. In Part 1 there are six questions only one of which No. 4 has been answered by the Defendant. The rest of the interrogatories in Part 1 relate to the packing and condition of the goods. In view of the pleading, the condition and packing of the goods do not appear to me to be at all relevant to the principal issue in the case which I have indicated above. The question of condition and packing of the goods may have a bearing on the question of damages. That does not appear to me to be very material at the present stage and particularly in view of the prayer for inquiry as to damages made in the plaint. In my opinion the interrogatories in Part I are not material at this stage and the Defendant's objection to answer the same ought to be upheld.

11. In Part 11 are set out fourteen interrogatories out of which the Defendant has only answered Nos. 2, 7 and 12. The rest of the interrogatories the Defendant has declined to answer on the ground that I have stated. As regards

interrogatory No. 1 in Part II I am clearly of opinion that this is material and relevant to the main issue in the case and should be answered. As regards interrogatories Nos. 3 and 4 in Part II I think the objection of the Defendant is well founded. There is no allegation in the plaint that the goods were loaded with other goods or that the wagon in which the goods were loaded was over-loaded or that the damage thereto was caused by such over-loading. These two questions appear to have occurred to the Plaintiff in view of the statement made in the written statement that the wagon in question had to be detached at a particular station on account of hot axle. Having got that admission, the Plaintiff, it seems to me, has sought to put in these interrogatories which appear to be of a fishing nature. The same remark applies to interrogatories Nos. 5 and 6 in Part II. I, therefore, uphold the objection of the Defendant with respect to questions Nos. 3, 4, 5 and 6 of Part II of the Interrogatories. Interrogatory No. 8 appears to me to be relevant and should have been answered by the Defendant. Interrogatory No. 9 has a direct bearing on the issue of detention and in my opinion the Plaintiff is right in complaining that this question has not been answered. Interrogatory No. 10 does not lead anywhere and does not appear to me to be relevant at all. The presence or absence of competent railway staff to reach a decision or to deal with the despatch of consignments or to arrange for immediate transfer of the said goods to other station appears to me to be of a fishing nature. This question may be permissible at the hearing in cross-examination, but I do not think that it properly forms the subject-matter of an interrogatory. Interrogatory No. 11 in Part II is certainly relevant and the Plaintiff is entitled to know what steps were taken to ensure the speedy despatch of the goods. The answer to this question may amount to a certain admission by which the Plaintiff's case as to wrongful detention may be to a certain extent strengthened.

12. Questions Nos. 13 and 14 relate to the condition of the goods and the observations I have made with regard to the questions in Part I of the interrogatories are applicable to them. I uphold the objection of the Defendant with respect to these items.

13. The Defendant has not answered any of the interrogatories in Part III. I uphold the objection of the Defendant with respect to interrogatory Nos. 3, 4, 5 and 6, 7, 8, 9 and 12, for reasons I have stated with regard to similar interrogatories in Part II. The rest of the interrogatories I think are relevant and should be answered.

14. As regards Part IV, the Defendant has answered all the interrogatories except 6 and 7. I am not prepared to say that questions Nos. 6 and 7 are irrelevant, to the issue of detention. It is said that the goods arrived at Howrah on the 7th August and they were delivered to the Plaintiff on the 14th August, 1944. The detention between the 7th August and 14th August may have some bearing in the case and the failure, if any, of the Defendant to give information to the Plaintiff may conceivably be relevant.

15. As regards interrogatory 3 the Plaintiff complains that the answer given is not sufficient. The interrogatory is specific as to the route and mentions certain stations by name and the question was whether the usual and/or normal route was that connecting Maga Tahsil, the place where the goods were consigned from, with Howrah via the main line of the East India Railway, namely, Saharanpur, Moghul Serai, Patna Junction, Asansol, Burdwan Junction. The Plaintiff has made a case of misdirection of consignment in paragraph 10 of the plaint and that is set up as an instance of misconduct on the part of the railway servants. In view of that issue, the answer to question 3 in Part IV should be more specific than the answer which has been given. I, therefore, direct that the Defendant should give a better answer to interrogatory No. 3 in Part IV and answer interrogatories 6 and 7 also in Part IV.

16. The object of interrogatories is not only to ascertain the nature of the opponent's case but they are designed to support the case of the party seeking to deliver interrogatories either directly by obtaining an admission or indirectly to impeach or destroy the adversary's case. The principles on which interrogatories are allowed are well known. The difficulty is in applying those principles to a concrete case. In some cases it is difficult to ascertain whether the interrogatory relates directly to the matter in issue and has only an indirect or remote bearing on the question. I have disallowed some of the interrogatories but I do not say that those interrogatories would be improper to be put to witnesses during cross-examination. I am satisfied that the scope of interrogatories is not so extensive as the scope of cross-examination. The subject-matter of interrogatories is in my opinion much restricted in scope than open cross-examination in Court. The net result is that I direct the Defendant to answer interrogatories Nos. 1, 8, 9, 11 in Part II and Nos. 1. 2. 10, 11 in Part III and Nos. 6 and 7 of Part IV. I also direct the Defendant to give further answers to question 3 in Part IV. The objection of the Defendant with regard to the rest of the interrogatories I uphold. The answers should be given by 2nd January, 1947. The costs of this application will be costs in the cause. Certified for Counsel.