

(2018) 07 BOM CK 0166
In the Bombay High Court
Case No : Writ Petition No.956 Of 2017

Narain Ramchandra Bakhle (since deceased) by his LR and Ors. APPELLANT

Vs

Govind Datta Bakhle (since deceased) by his LRs and Ors. RESPONDENT

Date of Decision : 09-07-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Criminal Procedure, 1973 — Section 145
Code of Civil Procedure, 1908 — Order 11 Rule 1, Order 11 Rule 4, Order 11 Rule 6,
Order 11 Rule 11, Order 11 Rule 12, Section 115, Section 151

Citation : (2018) 07 BOM CK 0166

Hon'ble Judges : Nutan D. Sardesai, J

Bench : Single Bench

Advocate : P. Arolkar, Sudin Usgaonkar, T. Ghanekar

Final Decision : Dismissed

Judgement

1. The petitioners have taken exception to the order dated 19.08.2017 passed by the Court of the Civil Judge Junior Division, Ponda invoking the

jurisdiction of this Court under Article 227 of the Constitution of India.

2. Heard Shri P. Arolkar, learned Advocate for the petitioners who submitted that the respondents had filed the suit for partition claiming right to the

property bearing survey nos.9/1 and 10/1 and the petitioners as the defendants had filed their written statement in defence specifically denying the

case set up by the respondents including their locus standi to file their suit for partition claiming exclusive right to the properties bearing survey nos.9/1

and 10/1 and that the statement in defence was duly accompanied by the list of documents on which they were relying.Â The respondents had moved

an application seeking interrogatories under Order XI Rule 4 of the Civil

Procedure Code which were in the nature of fishing inquiries and when the burden was on the respondents to prove their case and not on the petitioners.Â The written synopsis were filed on behalf of the respondents and when the application seeking interrogatories should have been under Order XI Rule 11 of the Civil Procedure Code.Â There was an error by the learned Trial Judge in allowing interrogatories as it did at the instance of the respondents and therefore the impugned order was liable to be quashed and set aside.Â He placed reliance in Tata Iron Steel Company Limited vs Rajarishi Exports (P) Limited [1978 Law Suit (Ori) 10], Canara Bank vs. Steron Castings Industries [1990 Law Suit (Del) 357] and Ali Kader Syud Hossain Ali vs. Gobind Dass [1890 Law Suit (Cal) 85].

3. Shri Sudin Usgaonkar, learned Senior Advocate appearing on behalf of the respondents submitted at the outset that it was for the petitioners to show how the order under challenge was perverse, without jurisdiction and/or that it had caused injustice to the petitioners.Â He referred to the plaint, the list of documents relied alongwith it apart from the written statement filed in defence by the petitioners which was vague and there was no basis for such a defence. The impugned order did not call for any interference in exercise of the writ jurisdiction and therefore the petition had to be dismissed.Â He placed reliance in M/s. Delhi Vanaspati Syndicate vs. K. C. Chawala [AIR 1983 Jammu & Kashmir 65], P. Balan vs. Central Bank of India, Calicut [AIR 2000 Kerala 24], Dinesh Jagannath Khandelwal vs Kundanlal Perumal Chhabriya & Ors.[2010 (1) Bom.C.R.728] and Maria Margarida Sequeira Fernandes & Ors. vs. Erasmo Jack De Sequeira (Dead) through LRs [(2012) 5 SCC 370].

4. i would consider their contentions, the relevant provisions of the Civil Procedure Code, the judgments relied upon and decide the petition accordingly.

5. The respondents had filed the suit for partition of the properties bearing survey nos.9/1 and 10/1 of Village Kavle on a plea that the property originally belonged to three brothers Ramchandra, Datta and Keshav, all sons of Anant Ram Bakhle and that the respondent no.1 was the grandson of Datta while the petitioners were the legal heirs of Ramchandra and the respondents alongwith the original defendant nos.2 to 4 were the sons of Datta.Â It was also their specific case that on the death of the wife of Datta,

Inventory Proceedings were initiated and by an order dated 10.10.1932, one-third share of the entire suit property was allotted to the said Datta, father of the respondent no.1 and original defendant nos.2 to 5. It was also their case that the petitioners started disturbing the division and they were unable to enjoy their share properly and peacefully constraining them to file the suit for partition in three equal parts and allotment of one third share to the respondent no.1, the original defendant nos.2 to 4 and the petitioners.

6. The respondent no.1 had relied on the list of documents being the order in the Inventory Proceedings dated 10.10.1932, the survey records and survey plans, the matrix certificate and the order in the proceedings under section 145 of the Cr.P.C. before the Executive Magistrate. The petitioners herein as the original defendant no.1 had taken a plea that the property bearing survey nos.9/1 and 10/1 were owned and possessed by them through their ancestors, specifically denied that the respondents herein were jointly owning the suit property along with them or their entitlement to one third of the suit property. It needs reckoning that though the petitioners denied the case of the respondent no.1 that the suit property was originally owned by three brothers, Ramchandra, Datta and Keshav, all sons of Anant Bakhle, there was no dispute about their interse relationship. The petitioners seeking exclusive ownership and possession of the suit property had relied on several documents being the survey records but none tracing their title to the suit property bearing survey nos.9/1 and 10/1 of Village Kavle, Ponda Taluka. In that context, the respondent no.1 herein were justified in seeking the interrogatories, the purpose of which amongst others was to narrow down the scope of dispute between the parties and in the long run shorten the litigation between the parties.

7. Order XI of the Civil Procedure Code deals with discovery and inspection and Rule 1 provides for the discovery by interrogatories. It reads as follows :

1. Discovery by interrogatories- In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons 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.â??

8. Sub-rule (4) deals with the form of interrogatories.â? Rule 12 deals with the application for discovery of documents and reads thus :

â??4. Form of interrogatories â?

Interrogatories shall be in Form No.2 in Appendix C, with such variations as circumstances may require.â??

Rule 12 of the Civil Procedure Code deals with the application for discovery of documents and reads thus :

â??Application for discovery of documents â?" Any party may, without filing any affidavit, apply to the Court for an order directing any other party to

any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein.â?

On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary

at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit :

Provided that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the

suit or for saving costs.â??

â? In other words, the caption of the application is not relevant and what matters is the substance of the application. Therefore, merely because the

application has been one styled as that under Order XI Rule 4 of the Civil Procedure Code which deals with the form of interrogatories, the petitioners

will not be entitled to reap any benefit therefrom, the intent being to seek the discovery as contemplated by Rule 1 Order XI of the Civil Procedure

Code.

9. In Tata Iron and Steel Company (supra), being the sole defendant in the money suit filed by the respondent with pendente lite and future interest

and the cost of the suit, the said amount was claimed on the basis of certain allegations made in the plaint based on contracts between the respondents

and the petitioners.â? In the suit filed under Order XI Rule 1 of CPC praying for an order of the Court directing the respondent to answer in writing

the interrogatories filed by them.â? The respondents filed its answer to the said

interrogatories without waiting for an order of the Court to that effect and thereafter the petitioners moved the application under Order XI Rule 11 of the CPC alleging that the answer to the abovementioned interrogatories furnished by the respondents were incomplete, insufficient and/or ambiguous and that the respondent had incorporated irrelevant materials in the said answers.Â On the said allegations, the petitioners prayed for a direction to the respondent to answer the said interrogatories in a more clear, explicit and specific manner, omitting the irrelevant portions therein and on dismissal of the last mentioned petition, the petitioners filed the Revision before the High Court of Orissa.Â

10. In *Tata Iron and Steel Company (supra)*, it was canvassed that the Civil Revision was not maintainable as by the impugned order the court did not adjudicate any right or obligation of the parties in controversy, and so it could not be said that 'a case had been decided' by that order within the meaning of Section 115, C.P.C, In support of his submission he cited the decision reported in *Baldevdas Shivilal & anr. Vs Filmistan Distributors (India) Private Limited & Ors.*[AIR 1970 SC 406].Â It was canvassed on behalf of the petitioner that the respondent had omitted to answer the question No.12 as it had not furnished the details of the correspondence, nor had it produced the documents referred to in that question. On serving interrogatories on a party under Order XI, Rule 1 of the Civil Procedure Code one cannot compel that party to make discovery on oath of any document. Provision for discovery on oath or production or inspection of documents is made under Rules 12 to 21 of Order XI of the Civil Procedure Code. The application in question was made by the defendant under Order XI, Rules 1, 2 and 4, C.P.C., as expressly mentioned in the application itself. Accordingly, the petitioner could not make any complaint if discovery of or about documents in any manner was not given or made by the plaintiff on the said application. In that view of the matter, there was no merit in the petition which was accordingly dismissed.

11. *Canara Bank (supra)*, had filed an application under Order XI Rule 12 read with Section 151 of the Code of Civil Procedure directing the respondent to discover on oath all the documents relating to the matter in the suit which were or had been in power and possession of the respondent within the period prescribed on the ground, inter alia, that their claim was based

only on documentary evidence and all the documents in the respondent's power and possession had not been filed by the plaintiff in the suit nor had they been supplied to the petitioners.Â The respondents denied and stated that they had filed alongwith the plaint all the requisite documents on which the plaint was relied and copies of those documents filed with the plaint had been supplied to the petitioners.Â Here too, the learned Single Judge did not find merit in the petition and dismissed the same.

12. Both these judgments do not at all support the contention of Shri Arolkar, learned Advocate appearing for the petitioner that the interrogatories sought by the respondent no.1 were without any basis.

13. Ali Kader (supra), held that a party seeking interrogatories cannot be allowed to put fishing questions in order to try whether he can discover any flaw in the defendant's case or suggest any answer to it. If this test be applied, it is clear, we think, that the interrogatories in question are inadmissible.

The petitioners have however failed to show from the material on record that the interrogatories were in the nature of fishing inquiries considering the specific plea taken by the respondent no.1 in their plaint and the defence taken by the petitioners in their written statement without any supporting documents.

14. In M/s. Delhi Vanaspati Syndicate (supra), a learned Single Judge of the Jammu & Kashmir High Court held while interpreting the scope of Order

XI Rule 1 of the Civil Procedure Code that interrogatories can be served to obtain admission from the opponent that are material for a decision of the

case. It observed 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. It referred to

the observation in the Apex Court Judgment in Ral Narayan v. Indira Gandhi [AIR 1972 SC 1302] where it was observed that: 'The interrogatories

must have reasonably close connection with matters in question'.

15. In P. Balan (supra), a learned Single Judge of the Kerala High Court spelt out

the object and purpose of serving interrogatories being to enable a party to require information from his opponent^Â for the purpose of maintaining his own case or for destroying the case of the adversary.^Â The answering of the interrogatories might save expenses and shorten the litigation by enabling a party to obtain from the other side information as to material facts regarding the questions in dispute or issues raised or to obtain admission of facts which the plaintiff has to prove on any issue. Answering the interrogatories might often shorten the trial proceedings and save the time of the Court and parties besides saving expenses for summoning witnesses, documents and the like. As a general rule, therefore interrogatories are to be allowed whenever the answer to them will serve either to help the party in proving his case or to destroying the case of the adversary. The power is not meant to be confined within narrow limits. It should be used liberally whenever it can shorten the litigation and serve the interest of justice. Nevertheless, the power is to be exercised with care and caution so that it is not abused by any party.

16. In *P. Balan (supra)*, it was observed that interrogatories have to be confined to the facts which are relevant to the matters in question in the suit.^Â

A plaint or a written statement may not sufficiently disclose the nature of parties to the case, and to make good the deficiency, either party can serve

interrogatories in writing which, when answered, would enable the Court to decide the suit without probing into the questions elaborately in the light of

oral and documentary evidence. The Courts have to approach the question in a broad perspective aimed at seeing whether the grant thereof will

enable fair trial and would save the cost of litigation to the parties. Of course, the possible objections specifically mentioned in Rule 6 of Order XI,

C.P.C. also have to be considered. The interrogatories have to bear a reasonable close connection with the matters in question. 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.

17. In *Maria Margarida Sequeira (supra)*, a three Judge Bench of the Apex Court held that discovery and production of documents and answers to

interrogatories, together with an approach of considering what in the ordinary course of human affairs is more likely to have been the probability, will

prevent many a false claims or defences from sailing beyond the stage for issues.Â If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission.Â On vague pleadings, no issue arises.Â Only when he so establishes, does the question of framing an issue arise.Â Framing of issues is an extremely important stage in a civil trial.Â Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case and that the Courts should have frequent recourse to power under Section 30 to ascertain the truth.

18. Dinesh Jagannath Khandelwal (supra), reiterated the settled position of law that a mere non-mentioning or wrong mentioning of a provision in an application is not a ground to reject an application.

19. The respondent no.1 by their application apparently made under Order XI Rule 4 of the Civil Procedure Code put forth their case that they had maintained the suit for partition while the petitioners had filed their statement in defence taking a plea that the whole suit properties bearing survey nos.9/1 and 10/1 were owned, possessed and enjoyed by them through their ancestors.Â The respondent no.1 therefore considering the plea taken by the petitioners herein had sought interrogatories on the nature of title documents to substantiate the case of the petitioners claiming title to the suit property and to produce the documents of ownership in court showing the correct boundaries of the suit property, the petitioners having disputed the boundaries too.Â The learned Judge on hearing the parties and on considering the pleadings at large before her, in the light of Order XI of the CPC, directed the petitioners herein to furnish the interrogatories at serial no.41(1), 41(2), 4(2)(a)(b) and 4(3) while disallowing the interrogatory at 4(1)(3) and 4(2)(a)(b).Â The order passed by the Trial Court which is assailed in this petition has not at all been shown by the petitioners to be either perverse, without jurisdiction or that it has caused injustice to the petitioners. Rather, it must be said that by seeking such interrogatories which had been directed by the Court, it would facilitate in narrowing the scope of dispute and shorten the dispute.

20. In the circumstances therefore, the order is not open to challenge in exercise of the powers of this court under Article 227 of the Constitution of India and hence i pass the following :

ORDER

The Writ Petition is dismissed with no order as to costs.