

(1991) 12 PAT CK 0017
In the Patna High Court
Case No : C.R. Nos. 1641 of 1991

Uday Kumar

APPELLANT

Vs

Surendra Prasad Sharma

RESPONDENT

Date of Decision : 05-12-1991

Acts Referred:

Citation : (1991) 12 PAT CK 0017

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.

1.The present revision application has been filed against the order dated 17-8-1991 passed by the learned Munsif 1st Court, Patna, in Title Eviction Suit No. 58/88. By this order the trial Court has refused the prayer of the defendant-petitioner to order the plaintiff-opposite party requiring him to answer certain interrogatories.

2. The present eviction Suit has been filed by the plaintiff on the ground of personal necessity under the provisions of Section 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act. To defeat the plaintiff's claim, the defendant-Petitioner appears to have taken one of the pleas that the plaintiff is possessed of one more house, which has been given to him by his maternal grand-father under a will, this house is the subject-matter of Probate Case No. 130 of 1988, which is still pending in the Court of the Additional District Judge, Patna. The interrogatories relate to this house and through interrogatories the defendant wants answer from the plaintiff with regard to the area of the land over which the house has been constructed and the number of the rooms in the house.

3. The plaintiff has already closed his evidence. During cross-examination he has specifically stated that he has not visited the said house for the last 30 years and no idea about the number of the rooms in the said house.

4. In the above background the Court below has held that the plaintiff has

already closed his evidence on 7-8-1990 and thereafter the defendant, in stead of leading his evidence, is trying to detain the proceeding on the pretext or the other.

5. Mr. Madhup, learned Counsel appearing for the petitioner, has submitted that since the interrogatories sought to be answered relate to the matters in question in the suit, therefore, keeping in view the provisions of Order 11, CPC the Court below should not have refused to require the plaintiff to answer the same. In support of his contention learned Counsel for the petitioner has placed reliance on the case of Raj Narain Vs. Indira Nehru Gandhi and Another, .

6. On the other hand Mr. Ajay Kumar Tripathi, learned Counsel appearing for the opposite party, has submitted that the revision application is not maintainable because the rejection of the prayer with regard to the answering of the interrogatories does not amount to "case decided" within the meaning of Section 115, CPC and further the prayer of the petitioner on the facts of the case lacks bona fide.

7. After hearing the parties, I have no hesitation in holding that the present revision application is fit to be rejected for more than one reason.

Order 11, Rule 6, CPC reads as under:

Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege, or any other ground, may be taken in the affidavit in answer.

Therefore, the prayer for answering of the interrogatories can be refused, inter alia.

(i) if it is shown that the prayer has not been made bona fide for the purpose of the suit; and

(ii) the matters enquired into are not sufficiently material at that stage.

8. In the present case, the interrogatories sought to be answered, on the face of the record, are wholly immaterial at the stage at which the answer was being sought. It is so because the questions by the interrogatories have already been answered by the plaintiff in the cross-examination. Further, I also agree with the learned Munsif that the defendant is trying to delay the suit, which is otherwise required to be disposed of expeditiously, on one pretext or the other, which merely demonstrates mala fide.

9. Now coming to the maintainability of the present revision application, I shall first refer to the case of Ramgulam Choudhary and Others Vs. Nawin Choudhary and Others, wherein it has been said that:

There are many kinds of interlocutory orders, where loosely speaking one may argue that some right or obligation of the parties in controversy is decided

therein, but applying the true meaning of the principle laid down by the Supreme Court in *Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others*, , one has to notice that there is no such right or obligation of the parties decided which can make it a case decided to attract the provision of Section 115 of the Code. As for example, some question in examination is disallowed, while it ought to have been allowed; some document is wrongly admitted in evidence, while it ought not to have been admitted; a pleader commissioner's report is confirmed or set aside and further investigation ordered; these will be the types of interlocutory orders which to my mind cannot be interfered with by the High Court within the meaning of Section 115 of the Code.

10. Keeping in view the aforesaid principle, I am of the considered opinion that the order refusing the prayer for answering the interrogatories under Order II, Rule 11, CPC does not amount to "case-decided" and, therefore, no revision application is maintainable against such orders u/s 115, CPC. There is unanimity on this aspect as it appears from the reported cases cited at the Bar. To support, I may refer to *Bisheshwar Singh Vs. A.G. and Others*, , *Dr. Ashok Kumar Tripathy Vs. Dalmia Institute of Scientific and Industrial Research*, .

11. For the reasons aforesaid, I find no merit in this application and the same is, accordingly, "dismissed. I award a cost of Rs. 500 (Five hundred), which will be paid by the defendant to the plaintiff within a month from today.