
(1987) 10 KL CK 0055
In the High Court Of Kerala
Case No : C.R.P. No. 2400 of 1986-M

W.S. Insulators of India Ltd.

APPELLANT

Vs

Power Systems and Projects and Another

RESPONDENT

Date of Decision : 19-10-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 10, Order 11 Rule 11, Order 11 Rule 2

Citation : (1988) 1 KLJ 215

Hon'ble Judges : Sukumaran, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer and P.K. Balasubramonian, for the Appellant; P.N. Krishnankutty Achan and N.N. Sugunapalan, for the Respondent

Final Decision : Allowed

Judgement

Sukumaran, J.—Interlocutories in relation to interrogatories have obstructed the trial. That was quite contrary to the intentment of a laudable objective of the salutary provision underlying Order XI, Rule 11 of the Code of Civil Procedure—expediting the disposal of the suit.

2. The suit filed by a company engaged in the manufacture of sophisticated electrical gadgets, made a monetary claim in relation to supplies made by it to the Electricity Boards in the Kerala and Karnataka States on the basis of transactions entered into between it and the Defendants. The Defendants disclaimed the liability. A replication on behalf of the Plaintiff reiterated and expatiated the plaint averments.

3. The parties filed large number of documents. Issues were framed in the suit. The Plaintiff filed an application I.A. 1958 of 1982 for leave of the Court to deliver certain interrogatories for answers under Order XI, Rule 1 Code of Civil Procedure. The Defendants resisted this application too. The resistance was upheld by the trial court. The application was accordingly dismissed.

4. The Plaintiff took up the matter before this Court, in C.R.P. No. 108 of 1983. This Court disposed it of by order dated 27th November 1985.

5. The Court noted that five issues did have relation to the interrogatories and consequently they were allowed in the case. The Court, however, hastened to clarify.

However, it has to be observed that some of the interrogatories are couched in a complicated manner so that the Defendants may have a genuine fear that they may be trapped by the answers that they may give to those interrogatories. This has to be avoided.

The order of the trial court declining leave to serve the interrogatories was accordingly set aside. The petition was remanded for fresh consideration by the lower court. The further direction reads:

The lower court will grant leave to the Plaintiff to raise interrogatories relating to "any matters in question" in this suit. In case the Defendants satisfy the lower court that any of the interrogatories are not clearly worded or that they should be modified for any other valid reason, the lower court will direct the Plaintiff to modify such interrogatories before granting leave. In case the Defendant finds it difficult to answer any interrogatory directly, they will be permitted to file all records connected with those interrogatories as provided in Order XI, Rule 2 Code of Civil Procedure, so that the Plaintiff and the court may find out the amounts, if any, actually received by the Defendants.

There was a fresh hearing of the matter by the trial court. The Court directed the Defendants-Respondents to answer the interrogatories 1 to 9 in the petition. The Plaintiff agreed that questions 10 to 13 need not be answered.

The Court stressed that the Defendant omitted to specify questions if answered will put them in the trap. Similarly there was no attempt on the part of the Defendants to point out to the Court that any of the questions are not properly worded or that they must be modified for any other reason. These omissions are very significant in view of the directions contained in the order of the High Court. A contention about non-availability of certain accounts consequent on a strike situation (the allegation was that some of the accounts were taken away by the striking employees) was found to be bereft of bona fides by the court below, and rightly so. Ultimately the answers were delivered by the Defendants on 10th March 1986.

6. On behalf of the Plaintiff I.A. No. 713 of 1986 was filed complaining that the refusal of the Defendants to answer interrogatories 4 and 8 was unjustified. That was sought to be met by a counter-affidavit by a statement that it was not open to the Plaintiff to canvass the truth of the answers in an application under Order XI, Rule 11, and "the truth or sufficiency of the answers does not come up for consideration at all." The court below disposed of that application by its order dated 8th August 1986, with a cryptic observation, that the truthfulness of the

contentions of the Defendants could not be questioned under Order XI, Rule 11, Code of Civil Procedure. The petition was dismissed. The Court held that answers furnished by Defendants in relation to interrogatories 4 and 8 were sufficient and proper. That order is challenged in this revision petition.

7. Some facts relating to the coe dispute may be relevant to appreciate the justifiability of the stand of the Defendants and the sustainability of the order of the court below.

8. A brief reference to the factual background of the legal issue has to be given at this stage. The Electricity Boards require various sophisticated gadgets in connection with its activities including the transmission of electricity, wave traps, coupling capacitors and capacity voltage transformers are some of those materials required by the Boards. Global tenders are invited by the Boards for the supply of such articles. Acceptance of tenders from overseas suppliers would not be advantageous to the Nation from the point of foreign exchange. Indigenous entrepreneurship would require encouragement in that context. Manufacturing concerns supplying sophisticated equipments (the procurement of which would have otherwise entailed foreign exchange obligations) are given encouraging incentives. They are termed in the context of these transactions as "export benefits". Export benefits are indeed very valuable from the business and financial points of view. Such benefits would naturally enter into the reckoning of any sensible and prudent business negotiation. Defendants were awarded contracts from the Electricity Boards of Kerala and Karnataka for the supply of some of the communication and telemetering equipments. According to the Plaintiff, the Defendants were manufacturing only some of the equipments covered by the contract. The Plaintiff claimed to be a manufacturer of coupling capacitors, capacitative voltage transformers and wave traps among others. That the Defendants placed orders with the Plaintiff for those equipments manufactured in the Plaintiff's factory is not disputed. There is, however, controversy that there was an agreement between the parties for passing on to the Plaintiff the export benefits in respect of the equipments supplied by the Plaintiff. The Plaintiff claimed that a sum of rupees sixteen lakhs was due to it as export benefit. According to the Defendants, there was no agreement to pass on the export benefits; and there was only a proposal, which was vitiated by mistake. Moreover, according to the Defendants, there was no compliance with the conditions contained in the proposal.

9. The objection of the Defendants about the order of the court below appear to be based on a cryptic sentence occurring in a commentary to the Code of Civil Procedure. No reference is made to any text book or decision for the proposition as given in the court below. It may be probably traced to the following sentence in one commentary:

The general rule is that the person answering must answer sufficiently, sufficiency and not the truth of the answer is the point to be considered at this stage.

10. Three decisions of the English Courts have been referred to in that context. They are *Lyell v. Kennedy* (1884) 27 Ch. D 1 (21), *Hoffmann v. Postill* (1869) 4 Ch. 673 : (1885) 2 T.L.R. 122. The non-availability of the factual background of those decisions misguided the court below.

11. Before discussing in detail those three decisions, it may be helpful just to have a background of the legal history behind interrogatories. William S. Holdsworth in his history of English Laws refers to the course of procedure of courts as it obtained prior to the Chancery Commission appointed in 1850:

The Plaintiff began his suit by addressing a bill to the Chancellor, praying process against the Defendant to compel him to appear and to put in an answer. The bill asked for relief, and required the Defendant to make discovery, i.e. to give on oath an answer to the matters stated and the interrogator contained in the bill.... having obtained this copy, the Defendant must decide whether he would demur or plead or answer. He might demur, either on the substantial ground that no case had been made out for the interference of the court or by reason of a technical objection to the form of the bill. A plea was generally a statement of matters not appearing on the face of the bill, which showed a reason why the Suit should be either barred or delayed. The answer, which was generally given on oath, both answered the Plaintiff's interrogatory contained in the bill and set out other facts essential to the Defendant's defence....

(emphasis supplied)

(See History of English Law by William S. Holdsworth, IX, 340-342.) Further steps in relation to application for time to answer and connected matters are thereafter dealt with:

There were frequent applications to a master for more time to answer, and appeals from his decision to the court. Omission to put in an answer in the proper time was punished by attachment; and, if the Defendant was attached, all applications for time must be made to the court. After a sufficient answer was filed, a motion was made by the Plaintiff for the production of documents in the Defendant's possession. This order was also the occasion of considerable expense. It often happened that the answer of the Defendant made it necessary for the Plaintiff to amend his bill, in order either to traverse the facts stated in the answer, or to introduce new facts. Further answers were then called for; and the case could then either be heard on these answers, or the Plaintiff could put in a formal replication denying the answers.

(See page Nos. 340-342)

The next stage is described as follows:

The pleadings being thus at an end, the next step was to lay them before counsel to advise on the evidence, and to prepare interrogatories for the examination of witnesses. On these interrogatories the witnesses were examined in private, none of the parties or their agents being present. As the interrogatories were

framed by counsel without knowing what witnesses would be forthcoming, or what answers they would give, it was necessary to frame question to meet many possible contingencies.

(See Pages 340-342)

The practice that obtained in England had been subjected to severe criticism. Gibbon commented that the procedure of the Court of Chancery in 1827 was more or less in the same condition of Roman Law in the time of Justinian. Dickens described the ill-effects of the practice as it obtained then in his novel "Bleak House". The abuses of the procedure of the Court, at last came to an end, when on the recommendation of the Chancery Commission, legislative amendments were brought about in the form of Chancery Procedure Act of 1852. William Holdsworth refers to the reforms in that Act:

They reformed both the pleading of the court, and its system of procedure. The form of the Bill was changed. It was to consist of a concise narrative of material facts divided into numbered paragraphs, and it was not to contain interrogatories.

(See Charles Dickens as Legal Historian By William S. Holdsworth at Page 114)

The provisions of the Code of Civil Procedure, 1908 has reflected many of the reforms that had come to stay in that country.

12. The decision in *Lyell v. Kennedy* (1884) 27 Ch. D 1 (21), was one in which the Court held that the interrogatories had been sufficiently answered. In the background of an interrogatory about steps and persons in the pedigree of hierarchy at law through whom the Defendant claimed, there was a professional privilege claim as lawyers and clients. The Plaintiff contended that assuming that the Plaintiff's claim was properly based in law, it was not so in fact and therefore could not be relied upon. It was this contention that was discussed with reference to questions of discovery and later with reference to answer to interrogatories. After extracting Rule 10 of Order XXXI of the Order of 1875 (which corresponds to Order XI, Rule 10, Code of Civil Procedure), Cotton L.J. observed:

So that with regard to an answer to interrogatories, what the Court has to consider is this simply, whether the answer is insufficient, not to go into the question of the truthfulness of the answer, but to see whether it is insufficient or not, and if it is insufficient, then only can it require a further answer.

13. In the present case, the interrogatory relates to a simple question about the export benefits received in relation to some among the many goods supplied by the Defendants. An answer of the type as furnished by the Defendants, is insufficient in that context. If it is insufficient, the Court has necessarily the power to direct the Defendant to answer or answer further.

14. One case which has closer application, having regard to the similar factual situation, is *Saunders v. Jones* (1877) 7 Ch. D 435. The Defendants therein

employed the Plaintiff under a written agreement which stipulated among other things salary and commission on the gross amount of sales. When disputes arose, the Defendant dismissed the Plaintiff. In a suit filed by the Plaintiff, he exhibited interrogatories, the first four of them asking in truth and substance the particulars of misconduct and the fifth asking the gross proceedings of sale during the period for which the Plaintiff claimed remuneration. The Defendant refused to answer. As regards the first four interrogatories, the reason was that the interrogatories related to the case of the Defendant and not of the Plaintiff. In relation to the 5th interrogatory, the ground urged was that the right of action was disputed and that the Defendant was not bound to give such account at that stage of the action. It was contended that the Defendant having denied that monies were paid, the Plaintiff was not entitled to interrogatories. James L.J. held:

If the Plaintiff succeeds in his contention that he is entitled to a fixed commission upon the amount, his having that amount admitted would enable him at the trial, without any further inquiry or litigation, to obtain a decree for the payment of that which is due to him.

The interrogatories were allowed by Bacon V.C. That order was affirmed in appeal. An interrogatory directed to showing what the amount received was, would be allowed as a matter of course at common law—was the observation of Thesiger L.J.

15. In the course of the judgment, Bacon V.C. observed that the purpose of the interrogatory should not be one "seeking to ransack the depositories of a Defendant of his title deeds or other documents, in order that the Plaintiff may establish more firmly the case he alleges, or make it out entirely". Such was not the case before him. Such is not the position in the present case too. If the answer of the Defendant is allowed to stand, the provision relating to interrogatory would be "an empty word", to borrow the language of Bacon V.C.

16. Where an account is claimed or question of account arises, the interrogatories as to details of accounts may be allowed. Vide *Nash v. Layton* (1911) 1911 2 Ch. 71.

17. It is unnecessary to deal with these matters over again as they have been already dealt with in the earlier order of my brother John Mathew J. referred to supra. [The decisions in *Jamaitrai Bishansarup Vs. Rai Bahadur Motilal Chamaria*, , *Raj Narain v. Indira Gandhi* AIR 1972 S.C. 1303 and *Malabar Produce Export Co. v. Nedungadi Bank Ltd.* 1982 KLT 462 been adverted to in that order.]

18. It is now too late for the Defendants to contend that the interrogatories are not relevant. That is now concluded by the order of this Court in C.R.P. No. 108 of 1983. Nor can they complain at this stage about the nature of the question or their wording. That too is concluded by the order of the Court passed on 25th February 1986 in I.A. 1958/82. The setting in which question No. 4 occurs has also to be noted in this connection. The first question is whether the Defendants

have received any export benefits. That was answered in the affirmative. The second question related to specific items of articles supplied to the Boards in respect of which export benefits by way of cash assistance had been received. The answer was that such assistance had been received on all items, The third question pertained to the amount received by way of cash assistance. The figure was given as Rs. 20,24,338. Question No. 4 in respect of which there is controversy, comes next and reads:

Do those amounts so received include the amount due by way of cash assistance in respect of coupling capacitors, capacity voltage transformers and wave traps supplied by Plaintiff to the Kerala State Electricity Board and Karnataka Electricity Board under their respective tender specification and if so, what is the amount received?

The answer in relation thereto is:

Coupling capacitors, capacity voltage transformers and wave traps were not supplied by the Plaintiff to the Kerala State Electricity Board and Karnataka State Electricity Board under Tender specification Nos. IDA/KSEB/8 and IDA/KEB/8.

Having regard to the pleadings in the case, and the earlier order passed by the trial court, as noted earlier, I have no hesitation to hold that this is not a proper compliance with the direction of the Court to answer interrogatories. The averments in the written statement make it clear that the answer is available or at any rate ascertainable. Illustrative of the situation is the sentence in paragraph 8 of the written statement reading:

The allotment of the export benefits are obtained only after the submission of various forms and papers and other formalities are complied with and after passing the said papers through the various authorities. It is a laborious process and involves much time and expenses for getting the said benefits before it is lapsed by time.

In other words, the figure is computable, though only with some little effort in that behalf. Nothing is made tangible in this world without necessary efforts. The answer to question No. 3 would clearly indicate that the figures are now finally available. When the entirety of the figures is available, as is evident from the answer given in question No. 3, the answer to interrogatory No. 4 comes with little grace. That answer as furnished to question No. 4 is totally unjustified and without bona fides.

19. The Court at this stage is not concerned with the ultimate entitlement of the plaintiff for the amount. That will necessarily depend upon an evaluation of the contentions between the parties, in the light of the evidence to be adduced in the case. The Defendants cannot justifiably take a defiant attitude or indifferent stand, when it is bound by the provisions of law and the orders of Court. No party to a suit can be allowed to adopt such an arrogant attitude. It is somewhat startling that the Defendants indicate a stand that the truth or sufficiency of the

answers does not come up for consideration at all. A party to the legal proceedings is bound to state the truth and is not licenced to utter any falsehood. The law frowns upon fouling the court process by false and fabricated evidence or perjury. It may be that an answer bona fide given by a party may not be the correct or proper one, on an elucidation of an issue in the light of the entirety of the evidence. In that way, the Court may not be concerned at an interlocutory stage with the ultimate truthfulness or correctness of the answer. However, the Defendant cannot with impunity violate a direction to answer a question when the information is readily available with the Defendants and the question is adjudicated by orders of Court as a relevant one to be answered by the Defendants.

20. Similar is the situation in relation to the answer to question No. 8. That too is preceded by question Nos. 6 and 7, which respectively deal with the factum of receipt of export benefits by way of import replenishment licence, and the actual receipt of such replenishment licence.

21. The court below missed the significance of the anterior orders, and the obligations under Order XI, Rule 1 Code of Civil Procedure. The jurisdictional inaction involved in not insisting on the Defendants giving a proper answer to questions 4 and 8 will have, therefore, to be corrected by this Court in the exercise of its revisional jurisdiction. The Court can, and should, require a person in such a situation to answer or answer further as the case may be, when such a person omits to answer, or answers insufficiently. The facts of the case clearly make out that the Defendants, although obliged to answer in view of the orders passed by this Court and the trial court, had omitted to answer. The Court was statutorily bound to compel such a recalcitrant party to answer. There was jurisdictional deficiency and inaction on the part of the court below when it ordered otherwise. That jurisdictional error has necessarily to be corrected in revision. The order of the court below is accordingly set aside. There will be a direction to the Defendants to furnish answers to the court below within a period of two weeks from today. The revision petition is allowed with costs here and in the court below.