

Shrivallabh Vs. Ibrahimkhan and Another

Shrivallabh Vs. Ibrahimkhan and Another

SooperKanoon Citation : sooperkanoon.com/1174706

Court : Mumbai Nagpur

Decided On : Oct-10-2014

Judge : A.S. Chandurkar

Appeal No. : Writ Petition No. 5675 of 2013

Appellant : Shrivallabh

Respondent : Ibrahimkhan and Another

Judgement :

Oral Judgment:

1. Rule. Heard finally with the consent of the learned Counsel for the parties.
2. This writ petition takes exception to the order dated 25/7/2013 passed below Exhibit 57 in Regular Civil Suit No.559/2012. By aforesaid order, the application moved by the petitioner original plaintiff calling upon the respondents defendants to answer interrogatories under provisions of Order 11 Rule 4 of the Code of Civil Procedure (for short the Code) has been rejected.
3. The facts giving rise to the present proceedings are as follows:

The petitioner is the original plaintiff who has filed Special Civil Suit No.60/2006 seeking declaration that the judgment and decree dated 5/11/2003 passed in Special Civil Suit No.325/1994 was null and void,

the same having been obtained by practicing fraud. According to the petitioner, the suit property was agreed to be sold by the respondent No.1 to the petitioner. According to the petitioners, a document was shown to have been executed on 3/2/1992 by the respondent No.1 by obtaining the acknowledgment of the petitioner as having receiving a sum of Rs.63,000/ in view of consideration for aforesaid plot. On the basis of another document dated 10/8/1992, the respondent No.1 had filed Special Civil Suit No.325/1994 seeking specific performance of the agreement of sale in respect of aforesaid suit property. According to the petitioner, in said suit a notice dated 12/7/1993 had been filed by the respondent No.1. According to the petitioner, the decree in the aforesaid suit had been obtained by the respondent No.1 by playing fraud. A declaration to that effect had been sought by the petitioner in subsequent suit.

4. The respondent No.1 filed his written statement opposing the claim of the petitioner. It was denied that the decree in Special Civil Suit No.325/1994 was null and void or that it was obtained by fraud.

5. The petitioner on 5/12/012 moved an application below Exhibit 57 calling upon the respondent No.1 to answer interrogatories in terms of provisions of Order 11 Rule 4 of the Code. The respondent No.1 filed his reply to aforesaid application vide Exhibit 58. According to the respondent No.1, the application filed by the petitioner was not tenable as the suit was at the stage of recording evidence. The trial Court by order dated 25/7/2013 held that the subject matter of interrogatories sought by the petitioner could be the subject of evidence during the trial. As the interrogatories sought by the petitioner formed part of evidence, the respondent No.1 could not be called upon to deliver interrogatories which constituted part of the evidence. On that basis, aforesaid application came to be rejected by the trial Court. Said order is impugned in the present writ petition.

6. Shri V. K. Paliwal, the learned Counsel appearing for the petitioner submitted that the learned Judge of the trial Court erred in rejecting the application below Exhibit 57. It was submitted that the interrogatories sought were relevant to the

matter in issue and hence, the application moved by the petitioner could not have been rejected on the ground that the interrogatories were part of evidence. The learned Counsel submitted that though the trial Court observed that the interrogatories could be delivered at any stage, by subsequently observing that as the trial had commenced, the interrogatories could not be allowed as the same were subject matter of evidence of the adversary party. He, therefore, submitted that the trial Court erred in rejecting aforesaid application.

7. Shri S. Moharir, the learned Counsel appearing for the respondents vehemently opposed aforesaid submissions and supported the order passed by the trial Court. He submitted that perusal of the interrogatories as sought indicated that the respondent No.1 could be submitted to cross examine and answers to aforesaid interrogatories could be sought. He further submitted that the burden to prove the case as pleaded was on the petitioner and the interrogatories as sought were unnecessary. He, therefore, submitted that no case was made out for interfering with the impugned order.

8. I have carefully considered the aforesaid submissions. I have also gone through the relevant provisions of Order 11 of the Code. Order 11 Rule 1 of the Code reads as under:

Order XI Rule 1:

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 the opposite parties or any one or more of such parties, and such interrogatories 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.

It is well settled that only those questions that are relevant as interrogatories are those which relate to any matters in question. The interrogatories served on the other side must have reasonably close connection with matters in question *Rajnarayan Vs. Indira Nehru Gandhi* (1972) 3 SCC 850. A party has a right to submit interrogatories relating to the matter in issue. The expression matter means a question or issue in dispute in the action and not the things about which such dispute arises. The object of aforesaid provisions is to save expenses by obtaining information as to material facts and to obtain admission of any fact which the party has to prove on any issue *Union of India Vs. Ibrahimuddin* (2012) 8 SCC 148. The right of a party to deliver interrogatories to his opponent and get answers from him is a valuable one in conducting his cause and he should not lightly be deprived of it. It must be remembered that discovery of facts and documents often tends to shorten litigation and save expenses, *Ramlalsao v. Tansingh Lalsingh*, A.I.R. 1952, Nagpur 135.

Interrogatories cannot be refused on the ground that the applicant has other means of proving the fact in question AIR 1960 Cal 536, *Jamayat Rai Vs. Motilal*. The provisions of Order 11 Rule 1 of the Code confer necessary discretion with the Court to grant leave for delivery of interrogatories. Thus, it is clear that while interrogatories should relate to a question or issue in dispute, the object of said provision is not to enable the applicant to know as to how his opponent is going to prove his case. It is, therefore, obvious that while considering an application seeking leave of the Court to deliver interrogatories under provisions of Order 11 Rule 1 of the Code, aforesaid aspects will have to be taken into account by the Court.

9. It will thus be necessary to examine whether the trial Court has while rejecting the application below Exhibit 57 considered the aforesaid legal aspects. The interrogatories sought by the petitioner relating to the notice dated 12/7/1993,

aforesaid notice dated 12/7/1993 prima facie appears to be a matter in issue in Special Civil Suit No.60/20066. The trial court while passing the impugned order, however, has proceeded to hold that as the interrogatories submitted were part and parcel of the evidence and as the trial had begun, discovery of evidence could not be sought. It has further observed that the subject matter of interrogatories could be the subject of evidence during the trial. It is thus, clear on perusal of the impugned order that various relevant aspects have not been taken into consideration while passing order below Exhibit 57. The trial Court has not considered the aspect that interrogatories cannot be refused on the ground that the applicant has other means of proving the fact in question. As observed above, the interrogatories which support the case of the applicant and damage/destroy the case of the opponent would be admissible. Viewed thus, the impugned order dated 25/7/2013 cannot be sustained as it fails to take into consideration various relevant and material aspects required to be taken into account while considering an application under Order 11 Rule 1 of the Code. The discretion in that regard would be required to be exercised by keeping in mind aforesaid legal aspects and the law laid down in that regard. As the discretion in that regard is to be exercised by the trial court which is seized of the suit, I do not find it appropriate to consider merits of the application for permission to submit the interrogatories vide Exhibit 57 in this writ petition. Said discretion will have to be exercised by the trial Court in accordance with law.

10. Thus, as there is failure to exercise jurisdiction vested in the trial Court, the impugned order cannot be sustained. As noted by the trial Court in its impugned order by referring to the decision of the Supreme Court in *A. Shanmugam V. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam and Others* reported in (2012) 6 SCC 430, in appropriate cases the Court should encourage interrogatories to be administered. If the impugned order though interlocutory in nature is sustained, the petitioner would be deprived on a vital right available to him under the Code. Moreover, to obviate a further remand at the appellate stage if the appellate Court finds that the trial Court was not justified in rejecting the application below Exhibit 57, a case for interference in writ jurisdiction has been made out.

11. Hence, the following order is passed.

(a) The order dated 25/7/2013 passed below Exhibit 57 in Regular Civil Suit No.559/2012 is set aside.

(b) The trial Court is directed to reconsider the application moved vide Exhibit 57 in accordance with law and in the light of observations made herein above.

(c) It is clarified that this Court has not examined the merits of the claim made by the petitioner and Exhibit 57 or the defence in that regard as raised by the respondent No.1 vide Exhibit 58. The trial Court shall decide Exhibit 57 independently without being influenced by any observations made in that regard in this order.

(d) Rule is made partly absolute in aforesaid terms with no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com