

\$~3(Appellate-2022)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 265/2022 & CM No. 14383/2022, CM No.14384/2022

MAMTA Petitioner

Through: Mr.Mukesh Rana, Adv.

versus

RISHIPAL Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **28.03.2022**

1. The issue that arises for consideration in this case is as to whether, prior to granting leave to serve interrogatories on the opposite party, the Court is proscribed, in law, from issuing a notice of the application seeking leave to serve interrogatories, calling for a response from the opposite party on the application.

2. The contention of Mr. Mukesh Rana, learned Counsel for the petitioner is that leave has necessarily to be granted, on an application preferred under Order XI Rule 1 of the Code of Civil Procedure, 1908 (CPC), seeking leave to serve interrogatories, *ex parte*, and that, at that stage, the opposite party has no right to oppose grant of leave. It is only after the interrogatories are served on the opposite party, according to him, that the opposite party may, under Order XI Rule 6

of the CPC, question the necessity of responding to one or more of the interrogatories served on him.

3. As this is the limited issue that arises for controversy, the factual dispute in the present case need not detain this court.

4. An application was preferred, by the petitioner, as the plaintiff before the learned Additional District Judge (“the learned ADJ”), in CS DJ 10/2021 (*Mamta v. Rishipal*), under Order XI Rule 1 of the CPC, to serve interrogatories on the defendant. The application came up for hearing on 15th March, 2022, when the defendant submitted that he had not received any copy of the application and that, before granting leave to serve interrogatories on him, it was necessary that a copy of the application be supplied to him. The plaintiff, *per contra*, submitted, before the learned ADJ that the prayer for grant of leave to serve interrogatories had necessarily to be decided *ex parte* and that the defendant was not entitled to receive any copy of the application before an order granting leave to serve interrogatories was passed. He, however, cited, in this context, two decisions of pre-CPC vintage, namely *Shamkissore Mundle v. Hosheebhoosun Biswas*¹ and *Prem Shukla v. Indra Nath*².

5. The learned ADJ observed that these decisions had been rendered in the 19th century, prior to the coming into force of the CPC and could not, therefore, be treated as authorities on the ambit of

¹ ILR (1880) 5 Cal 707

² (1891) 18 Cal 420

Order XI Rule 1. The learned ADJ also noted that, in *Centrient Pharmaceuticals Netherlands B.V. v. Dalas Biotech Ltd.*³, this Court had dismissed the application for seeking leave to serve interrogatories after hearing both parties.

6. The learned ADJ also noted the wording of Order XI Rule 2 of the CPC, which reads thus:

"On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court and that court shall decide within seven days from the day of filing of the said application. *In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them*, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs".

(Emphasis supplied)

7. Relying on the italicised words in Order XI Rule 2, the learned ADJ observed that the requirement of the Court, in taking a decision on the application seeking leave to serve interrogatories, having to take into account any offer made by the party sought to be interrogated to deliver particulars make admission or produce documents, necessarily implied that, before taking a decision on whether to grant, or not to grant, leave to serve interrogatories, the Court was required to hear the opposite party. The impugned order also notes the fact that, despite an opportunity having been granted to him in that regard, learned Counsel for the petitioner was unable to

³ 2021 (85) PTC 267 (Del)

invite the attention of the Court to any decision which precluded the Court from issuing notice on an application seeking leave to serve interrogatories before deciding whether to grant, or refuse, leave.

8. Before me, too, Mr. Rana has been unable to draw attention to any decision which precludes a Court from issuing notice on an application preferred under Order XI Rule 1 of the CPC, seeking leave to serve interrogatories on the opposite party, before granting or refusing to grant, such leave.

9. Order XI Rule 1 reads thus:

“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 person 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.”

10. The use of the word “may” in Order XI Rule 1, when referring to the power of the Court to deliver interrogatories on an application by one of the parties before it, indicates that the right to serve interrogatories is not absolute, and that a discretion vests in the Court in that regard. Serving of interrogatories on the opposite party can only, therefore, be by leave of Court. The sequitur would, therefore, be that the opposite party could oppose the grant of such leave.

Extending of an opportunity to the opposite party to, if it so chooses, oppose grant of leave to serve interrogatories is, therefore, in my view, inbuilt into Order Rule 1. Of course, it may be that, in more cases than not, grant of leave to serve interrogatories may be the norm; that, however, cannot foreclose a Court of its right to issue notice on an application to serve interrogatories on the opposite party, before deciding whether to grant leave or not.

11. Mr. Rana had placed reliance on Order XI Rule 6 of the CPC to support his submission that the opposite party was not entitled to any notice on an application seeking leave to serve interrogatories before leave was granted. In the first place, accepting of such an interpretation would result in replacing the word “may” in Order XI Rule 1 of the CPC with the word “shall”, and the discretion vested in the Court, by Order XI Rule 1, on the issue of whether or not to grant leave to serve interrogatories, would stand reduced to a nullity. Secondly, the existence of the right, in the opposite party, to object to interrogatories under Order XI Rule 6, cannot preclude a Court from issuing notice on the application seeking leave to serve interrogatories, before deciding whether to grant leave or not to grant leave.

12. Mr. Rana has also invited my attention to two decisions of learned Single Judges of this Court, in *AFL Developers Pvt. Ltd. v. Veena Trivedi*⁴ and *Shree. Vijaya Fabrics v. Shivani Khanna*⁵.

⁴ AIR 2000 Del 354

⁵ 2021 SCC OnLine Del 4495

13. Neither of these decisions, in my view, supports the contention being advanced by Mr. Rana.

14. Para 5 of the report in *AFL Developers*⁴, to which Mr. Rana invites my attention, reads thus:

“5. Perusal of the Order XI, Rules 2, 6 and 7, CPC reveal that the objections with regard to the relevancy of interrogatories can be raised at three different stages. Under Rule 2, interrogatories can be delivered with leave of the Court, which should be granted when the interrogatories, which are sought to be served are necessary for disposing of the suit, fairly or for saving costs. The order granting leave to serve interrogatories, certainly does not preclude the opposite party from raising objection to answer any interrogatory, on the ground that the same is scandalous or irrelevant or not exhibited bona fide. for the purposes 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, as provided under Rules 6 and 7, CPC. The interrogatories can be set aside on the ground that they have been exhibited unreasonably or vexatiously. These can be struck out on the ground that they are prolix or unnecessary or superfluous, oppressive or scandalous. Thus these rules clearly show that even after leave to serve the interrogatories is granted, objections with regard to relevancy of interrogatories can be raised on the ground mentioned in these rules. There is some overlapping between these two rules. The contention of the applicant/defendant that the opposite party cannot object or refuse to answer the interrogatories once leave to serve the interrogatories is granted by the Court, with the observation, that the interrogatories relate to the matters in question in the suit is not sustainable. While granting leave to serve the interrogatories the Court is required to examine the interrogatories broadly to find out whether the same relate to any matter in question in the suit. It does not in any way affect the right of any party called upon to answer the interrogatories to object to the same as provided under the rules.”

The afore-extracted paragraph from *AFL Developers*⁴ sets out the scheme of things after leave is granted on an application to serve interrogatories on the opposite party. It does not, in any manner, hold that a Court is precluded from issuing notice on an application seeking leave to serve interrogatories and must necessarily grant leave *ex parte*, as Mr. Rana would seek to contend.

15. Mr. Rana also draws attention to the decision in *Shree Vijaya Fabrics*⁵, specifically in para 4 thereof which reads thus:

“4. The above provisions have been interpreted by this Court in a catena of judgments (see *Sharda Dhir Vs. Ashok Kumar Makhija and Ors.* 2002 SCC OnLine Del 688, *Canara Bank Vs. Rajiv Tyagi & Association & Anr.* ILR (2010) III Delhi 270 and *Transport Corporation of India vs. Reserve Bank of India* 2017 SCC OnLine Del 10063. I have, in a recent judgment in *Tara Batra Vs. Punam A. Kumar & Ors.* 2021 SCC OnLine Del 4331, while following the previous judgments of this Court, held that Courts while deciding an application seeking leave to administer interrogatories have to only consider whether the interrogatories sought to be administered have any bearing on the case. The Courts have to be liberal and not hypertechnical in allowing the use of interrogatories as the interrogatories help shorten the controversy between the parties and hence, reduce the time taken for the trial. It has also been held that once the interrogatories are served upon the party, the said party has to answer the interrogatories on affidavit and in the said affidavit, objections can be raised on the ground that the said interrogatories are scandalous or not relevant for the purposes of the suit. It is at that stage, that the Courts have to consider which of the questions in the interrogatories the party should be compelled to answer.”

16. The afore-extracted paragraph, too, does not preclude a court from issuing notice on an application seeking leave to serve interrogatories.

17. No exception, therefore, can be taken to the impugned order of the learned ADJ, issuing notice, to the respondent, on the application preferred by the plaintiff/petitioner under Order XI Rule 1 of the CPC, seeking leave to deliver interrogatories. The position, that an act which is not proscribed in law is permitted, is axiomatic⁶. There is no proscription, in law, either statutory or precedential, inhibiting a court from issuing on an application filed under Order XI Rule 1, seeking leave to serve interrogatories on the opposite party, before deciding whether to grant, or refuse to grant, leave.

18. No exception can, therefore, be taken to the decision of the learned ADJ to issue notice on the application of the petitioner under Order XI Rule 1.

19. This petition, therefore is fundamentally misconceived and is accordingly dismissed.

20. The documents filed in sealed cover may be re-sealed and returned to the learned Counsel for the petitioner.

21. No costs.

C. HARI SHANKAR, J

MARCH 28, 2022/kr

⁶ **Rajendra Prasad Gupta v. Prakash Chandra Mishra (2011) 2 SCC 705**