

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 23-01-2018

Rajinder Pal

....Petitioner

versus

Rajindra Soap Works and another

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Sherry K.Singla, Advocate
for the petitioner.

Mr. Abhishek Singla, Advocate
for the respondents.

B.S. WALIA, JUDGE (ORAL)

[1] The petitioner/plaintiff (hereinafter referred to as the petitioner) has challenged order dated 02.01.2016 i.e. Annexure P-5, passed by the learned Civil Judge (Junior Division), Talwandi Sabo, whereby application under Order 11 Rule 1 CPC filed by him for granting leave to deliver interrogatories to the defendants/respondents (hereinafter referred to as the respondents) was dismissed.

[2] Brief facts of the case leading to the filing of the instant petition are that the petitioner filed a suit for recovery of Rs.3,34,000/- i.e. Rs.2,45,663/- as principal amount and Rs.88,447/- as interest @ 12% per annum w.e.f. 01.04.2011 till date on the basis of account books as also income tax returns filed by the defendants/ respondents.

[3] That as per the case set up by the petitioner, respondent No.2 is his real brother and is running a soap factory in the name and style of M/s

Rajindra Soap Works, Gaushala Road, Maur Mandi, District Bathinda. Being the brother of the petitioner, respondent No.2 used to borrow money from the petitioner for the smooth running of his business.

[4] The respondents appeared before the learned trial Court and contested the case by filing written statement denying borrowing of any amount or taking any assistance from the petitioner while alleging that the account books of the petitioner were totally false and manipulated documents.

[5] The learned trial Court framed issues vide order dated 27.11.2014 and thereafter fixed the case for evidence of the petitioner. During the course of evidence, the petitioner filed an application for grant of leave to deliver interrogatories to the respondents. The same was dismissed by the learned trial Court vide order dated 27.01.2016. The petitioner has challenged the impugned order (Annexure P-5) on the ground that discovery by interrogatories relevant to the point in issue are to be encouraged and the application ought not to have been dismissed on the ground that the questions posed by way of interrogatories could be put by the petitioner to respondent No.2 upon his appearance in the witness box. Reliance in this context is made by learned counsel for the petitioner on the decision of this Court in **Major Singh versus Suresh Kumar 2009(5) RCR (Civil) 667.**

[6] Learned counsel for the respondents on the other hand contended that the alleged interrogatories were fishing in nature and the plaintiff wanted to create evidence in his favour besides the same were not relevant for the decision of the case.

[7] I have considered the submissions of counsel for the parties and

have also gone over the impugned order. Perusal of the impugned order reveals that the learned trial Court was of the view that some of the interrogatories were fishing in nature and that in order to prove one's case, a party would have ample opportunities to adduce evidence in support of its contentions.

[8]. Admittedly, the suit is for recovery of money alleged to have been given by the petitioner to his brother i.e. respondent No.2 by way of financial assistance duly and stated to be reflected in the account books and income tax returns of the respondents. In paragraph No.3 of the plaint, it has been averred that defendant No.2 had opened account of the plaintiff in his account books and that transactions qua the account of the plaintiff were being shown in the account books as well as income tax returns of the defendant firm. A perusal of the corresponding paragraph of the written statement reveals that there is no denial to the averments in paragraph No.3 of the plaint that transactions qua accounts of the plaintiff were being shown in the account books as well as income tax returns of the defendant firm. Although stand in the written statement is that the defendant never took any financial assistance from the plaintiff for running of his business yet learned counsel for the petitioner while referring to the interrogatories filed contended that it was apparent that the interrogatories pertain to the matter in issue, therefore, the same were relevant and ought to have been allowed, as the same would shorten the trial. Learned counsel for the petitioner referred to the decision in Major Singh's case (supra) in support of his plea. Relevant extract of the same is reproduced hereunder:-

“10. In Thakur Prasad vs. Md. Sohayal and others, AIR 1977 Patna 233, the Court highlighted the objective to be achieved by the interrogatories that it would save expenses and time by enabling the party to obtain from his opponent information as to the facts material to the questions in dispute between them and to obtain

admission of any facts which he has to prove on any issue raised between them. An admission of the adversary would serve to maintain the case of the party administering the interrogatory or the answer might be destructive of his own case."

[9] As per decision in Major Singh's case (supra), discovery by interrogatories is to be encouraged where it shortens the trial and saves costs in leading evidence and that such an option cannot be denied to a party on the ground that the questions in respect thereto can be put to the opposite party at the time of recording of evidence or that the party seeking delivery of interrogatories has to stand on his own legs and has to prove the case on his own. As per the proviso to Order 11 Rule 1 CPC, the interrogatories which do not relate to any matter in question in the suit shall be deemed irrelevant. Although the learned trial Court has recorded that some of the interrogatories are fishing in nature but the fact remains that there are a number of interrogatories which were moved by way of application Annexure P-3 and a perusal thereof reveals that some of them are indeed relevant to the point in issue and would certainly go a long way in assisting the Court in arriving at a just decision of the case expeditiously not only by shortening the trial but also reducing the costs to be incurred by the parties in leading evidence. The option available to the petitioner under Order 11 Rule 1 CPC could not have been denied on the ground that the information sought by way of interrogatories could be put to respondent No.2. at the time of recording of evidence or that the plaintiff-petitioner has to stand on his own legs and prove his defence instead of putting burden on the shoulders of the other party. It also needs mention that the impugned order is cryptic and does not mention as to which of the interrogatories are fishing in nature. As has been noted above, there are a number of interrogatories and dismissing the application on the ground that some of the

interrogatories are certainly fishing in nature, is not enough. It was required of the trial Court to have categorically referred to the interrogatories which were fishing in nature and reject the same while allowing the others which were relevant to the point in issue and which would shorten the trial and save expense being incurred by the parties besides assisting the Court in expeditiously determining the question in controversy.

[10] In the light of the position as noted above, the impugned order is unsustainable. Accordingly, the same is set aside. The trial Court is directed to decide as to which of the interrogatories set up by the plaintiff-petitioner are relevant to the point in issue and as to which are irrelevant and allow relevant interrogatories to be delivered to the respondents-defendants by granting leave to the plaintiff-petitioner.

[11] Revision petition allowed in aforementioned terms.

(B.S. WALIA)
JUDGE

January 23, 2018

rajesh.k.khurana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No