

Dasan Vs Yathra,A Registered Partnership Firm

Court: High Court Of Kerala

Date of Decision: Feb. 13, 2025

Acts Referred: Code of Civil Procedure, 1908 " Order 11 Rule 1, Order 11 Rule 11, Order 19 Rule 2

Hon'ble Judges: P. Krishna Kumar, J

Bench: Single Bench

Advocate: C.G.Bindu, C.G.Ajitha, P.V.Jayachandran, G.N.Deepa, Nidhi Balachandran

Final Decision: Disposed Of

Judgement

P.Krishna Kumar, J

1. The plaintiff, who filed a suit for the recovery of money from a registered partnership firm engaged in the business of transport service, delivered

interrogatories for the discovery of facts related to the suit when the defendants denied the plaint claim. Alleging that certain defendants did not fully

answer the specific questions put to them while answering the interrogatories through Ext. P4 affidavit, the plaintiff further filed Ext.P12 application

under Order XI Rule 11 read with Order XIX Rule 2 of the Code of Civil Procedure (hereinafter referred to as "the Code") for viva voce

examination of the defendants.

2. The Sub Court dismissed the said application as per Ext.P13 order by finding that the plaintiff did not specifically state to which question the

answers are incomplete or contradictory. The plaintiff challenges the said order by preferring the present original petition.

3. The petitioner contends that as he has no documentary evidence to prove the plaint claim, it is highly necessary to get proper and precise answers

to the interrogatories originally submitted and thus viva voce examination of the respondents is unavoidable. The respondents contend that there is no

illegality in the impugned order and the petitioner has no justification for filing the above-said application.

4. Heard the learned counsel appearing for the petitioner and the respondents. Before assessing the legality of the impugned order, it is necessary to

delineate the legal framework governing the discovery of facts by delivery of interrogatories and the consequence of failure to answer the same.

5. Interrogatories are aimed at discovering facts. They will narrow down the controversy in a suit and enable the litigant to compel his opponent to

disclose facts relating to the matters in question in a suit or other proceeding. Answers given on interrogatories and documents disclosed on the

application for discovery of documents will form part of the evidence.

6. As per Rule 1 of Order XI of the Code, there are certain restrictions for delivering interrogatories. The interrogatories can be delivered only with

the leave of the court and the party shall not deliver more than one set of interrogatories to the same party, without the order of the court. The scope

of interrogatories shall be related to any matters in question in the suit. The expression "matters in question in the suit" is similar to the facts in

issue i.e., matters related to the existence or non-existence of any right or liability asserted or denied in the suit.

7. Matters in question/issue are indeed not as wide as matters that are relevant during the cross-examination of a witness in the suit. Therefore, the

interrogatories that are not related to matters in issue will be deemed irrelevant, even if such matters might be admissible on oral cross-examination of

a witness. The court will not grant leave to deliver such interrogatories. If the interrogatories relate to any matter in question or issue in the suit, the

court must be very liberal in granting leave, as a general rule. It should ordinarily encourage the litigants to deliver the interrogatories to the opponent,

especially for the reason that a party to a proceeding cannot, as of right, examine his opponent as a witness during the trial.

8. If the opposite party omits to answer the interrogatories or provides insufficient, vague, or evasive responses, the applicant has two options. He can

apply to the court for leave to deliver a fresh set of interrogatories if it is helpful to pinpoint the shortcomings in the reply. Delivering more than one set

of interrogatories, though restricted in the first proviso to Rule 1 of Order XI, the same provision makes it clear that it can be done with the permission

of the court. A vague or evasive answer to the first set of interrogatories is certainly one of such eventualities in which the court can permit a party to

deliver another set of interrogatories to nail down his contumacious opponent.

9. The second course open to him is to apply to the court under Rule 11 of Order XI. In *Yusuff v. Central Bank of India* (1993 (2) KLT 684), this

court has held that the drastic step of striking out the defence or dismissing the suit as envisaged under R.21 of Order XI would be invoked by the

court only if the opposite party has failed to comply with the direction of the court in pursuance to an order under R.11 of O.XI.

10. When an application under Rule 11 of Order XI is made alleging that the opposite party omitted to answer the interrogatories or the answers given

are insufficient, the applicant is bound to specify the interrogatories or part of the interrogatories to which the omission occurred or further answer is

required. He should also state in a reasonably clear manner the context that requires further clarification. It is not permissible to fish for answers

under the guise of requiring further answers. The court can decide the question of omission or insufficiency in the answers only if the request is

definite and clear.

11. In this case, the petitioner chose the second course. Let us now examine the scheme of Rule 11 to decide the correctness of the petitioner's

challenge. Rule 11 reads thus:

“Order to answer or answer further - Where any person interrogated omits to answer, or answer insufficiently, the party interrogating may apply to the Court for

an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or answer further, either by affidavit or

by viva voce examination, as the Court may direct.”

It is clear from the language of Rule 11 that a party aggrieved by the omission or insufficiency in the answers to the interrogatories can apply to the

court for an order requiring the opposite party to answer/answer further, as the case may be. The manner in which the answer/further answer

(“answer” in the case of omission and “answer further” in the case of insufficiency) is to be given by the opposite party will be decided by

the court. The court may either direct the party to answer/ answer further by affidavit or by viva voce examination. Rule 11 does not empower the

party interrogating to choose a particular course of action in this regard. He can only apply to the court for an order requiring the opposite party to

answer in the manner decided by the court.

12. The term “viva voce examination” is used in Rule 11 of Order XI to connote oral examination, in contradistinction to the written examination

of the opposite party by delivery of interrogatories as contemplated in Rule 1 of Order XI. Conventionally, a viva voce examination will be ordered by

the court only in exceptional circumstances. In Halsbury's Law of England (4th edition, Volume 13 Paragraphs 101 and 102, paragraph 140), it is

stated as follows:

“Oral Examination. The order may be that the further answer be by affidavit or by oral examination, but the latter mode is only adopted in exceptional cases. Where

it is ordered the scope of the examination is not larger than that of interrogatories, and the party examined can only be required to give such an answer as would have

been sufficient if given in the affidavit in answer to the interrogatories.”

However, if the court feels that a party to the suit is evading answering the relevant interrogatories, it should not hesitate to order the same if it finds

that such a viva voce examination alone would yield the desired result. Similarly, if the court finds that the answers given by the party are

unsatisfactory, in spite of being given an opportunity to answer further by affidavit, the court should ordinarily direct him to appear in person for a viva

voce examination. A similar view was expressed by this Court in Jortin Antony v. S.P.D Marthanda Varma (2001(1)KLT 511).

13. A proceeding before a court of law is not akin to a game of hide-and-seek between the parties. The parties are bound to state the truth, and

nothing but the truth, before the court. If a party evades its responsibility to the court and employs evasive tactics, the court has a duty to ensure a

level playing field for the adversary by invoking the appropriate measures provided in the Code.

14. However, in Ext.P12 application submitted by the petitioner, he has not described the insufficiency or incongruity of the answers. Instead, he has

made a general statement in paragraph 4 of the affidavit that the answers given by the respondents are contradictory and insufficient and thereby, he

requested the court to order the appearance of the respondents for a viva voce examination. This is not the scheme of Rule 11 to Order XI of the

Code and the said allegations are not sufficient to invoke the jurisdiction of the court under the said provision. It is true that the petitioner has filed the

said application under Rule 2 of Order XIX as well. A direction under Order XIX cannot be sought by alleging non-compliance with an order passed

under Rule 1 of Order XI.

15. In view of the above discussion, this court finds no illegality in the impugned order. However, during the course of the hearing, the learned counsel

for the petitioner made a laborious effort to explain how the respondents flouted the orders of the court. Keeping in mind the laudable object of Order

XI of the Code and the circumstance in which the petitioner has made Ext.P12 application, it is only just and proper to permit the petitioner to make a

proper application under Order XI of the Code.

16. In the result, the original petition is disposed of as follows:

(i) There is no illegality in Ext.P13 order passed by the Sub Court.

(ii) However, if the petitioner submits a proper application under Order XI of the Code within a period of two weeks from the date of receipt of a

certified copy of this judgment, the Sub Court shall consider the same and pass appropriate orders, before proceeding with the trial of the suit.

(iii) Considering the undue delay that occurred in the disposal of the suit owing to the pendency of this original petition, the Sub Court shall make all

efforts to dispose of the suit within a period of three months from the final disposal of the application, if any, filed by the petitioner under Order XI of

the Code.