

(1968) 07 AHC CK 0006

Allahabad High Court

Case No: Company Petition No. 13 of 1967

Aluminium Corporation of India
Ltd.

APPELLANT

Vs

Lakshmi Ratan Cotton Mills Co.
Ltd.

RESPONDENT

Date of Decision: July 8, 1968

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 11 Rule 11, Order 11 Rule 6, Order 11 Rule 7, 141
- Companies (Court) Rules, 1959 - Rule 9

Hon'ble Judges: M.H. Beg, J

Bench: Single Bench

Advocate: Jagdish Swarup, C.S.P. Singh, V.B. Singh and A.K. Basu, for the Appellant; B.L. Gupta and Kameshwar Prasad, for the Respondent

Final Decision: Disposed Of

Judgement

M.H. Beg, J.

In this case, after the framing of issues on a winding up petition of a creditor and before the case could be taken up for final hearing, an application was filed under Order XI, Rule 2, Civil Procedure Code, on behalf of the petitioning creditor for leave to deliver interrogatories. As many as 94 questions were listed. It was noted on the application that the questions were required to be answered by Shri. Ramgopal Gupta, Shri Ram Prasad Gupta, Shri Pushoa Raj Gupta, Shri S. D. Garg and Shri Gulab Chand Jain, without specifying which questions were to be answered by which party. After considerable argument on the question whether the interrogatories were covered by the issues framed, an order was passed on March 21, 1968, granting leave, under Order XI, Rule 2, Civil Procedure Code, to deliver these interrogatories upon the company. Before granting leave, the case of each side had to be carefully examined. It was found that matters arising in the case covered a fairly wide field.

The issues were also reframed on March 20, 1968. Among the issues, as reframed, was a separate issue on the broad question whether it was just and equitable to wind up the company, apart from the issue whether the company was commercially insolvent. There was also an issue on the question whether the petition is mala fide and liable to be dismissed for this reason.

2. After the service of the interrogatories upon the company, a twenty page application was filed on March 27, 1968, on behalf of the company in which general objections were taken to all the interrogatories and objections were also taken to each of the interrogatories. The application purports to be made under Order XI, Rule 7, Civil Procedure Code. The prayer was that the whole set of interrogatories may be struck out on the ground that they have been exhibited unreasonably and are vexatious, prolix, oppressive, unnecessary and scandalous. Each interrogatory had, therefore, to be scrutinized together with the objections. The affidavit filed in support of the petition, the counter-affidavit, and the rejoinder affidavit had also to be thoroughly examined. The objections on behalf of the company were three-fold: firstly, that the so-called interrogatories fall outside the scope and purpose of interrogatories which can be served under order XI, CPC ; secondly, that they go outside the scope of the petition itself even after it had been amended ; and, thirdly, that the whole purpose of the interrogatories was mala fide and that they constitute an attempt to defame the company by raising matters which had no material bearing on the issues involved.

3. In England, the interrogatories are allowed for the following purposes :

1. To ascertain the nature of your opponent's case or the material facts constituting his case (see *Eade v. Jacobs* [1877] 3 Ex. D. 335, (C.A.), *Attorney-General v. Gaski* [1882] 20 Ch. D. 519 and *Marriott v. Chamberlain* [1886] 17 Q.B.D. 154 (C.A)..

2. To support your own case either-

(a) directly, by obtaining admission, or

(b) indirectly, by impeaching or destroying your adversary's case (see *Grumbrecht v. Parry*, [1804] 32 W.R. 558, *Hennessy v. Wright* [1990] 24 Q.B.D. 445, and *Attorney-General v. Newcastle-upon-Tyne Corporation* [1897] 2 Q.B. 384.

4. Order XI of our CPC closely follows the rules of practice and procedure evolved in England. I have, therefore, considered it not improper to refer to the object of interrogatories according to the rules which prevail in England. The power to serve interrogatories is not meant to be confined within narrow technical limits. The subject-matter of Order XI, Civil Procedure Code, is: " Discovery and Inspection ". It has to be remembered that these remedies were evolved by the Chancellor's Court of Equity. The power to order discovery by means of interrogatories should certainly be used liberally whenever it can shorten litigation and serve the interests of justice as observed in [Jamaitrai Bishansarup Vs. Rai Bahadur Motilal Chamaria](#), , by A.N. Ray

J. of the Calcutta High Court.

5. There are, however, limits to the utility of the power to order interrogatories to be answered. Those limits are set by the rules of relevancy, by the demands of decency and propriety, and by the even wider basic requirements of fair play, justice and equity. For example, although one of the objects of interrogatories is to ascertain an adversary's case, yet they cannot be permitted to be used by a party merely to obtain a disclosure beforehand of evidence supporting the adversary's case as this would give one party an unfair advantage over the other. The object of Order XI, Civil Procedure Code, is more akin to that of Order X, Civil Procedure Code, than to that of cross-examination.

6. Order XI, Civil Procedure Code, itself indicates the limits within which the power to require information through interrogatories ought to be confined. Order XI, Rule 1, Civil Procedure Code, contains the proviso that "interrogatories which do not relate to any matters in question in the suit shall be deemed to be irrelevant notwithstanding that they might be admissible on the oral cross-examination of a witness". There is then the right given to an objector under Order XI, Rule 6, Civil Procedure Code, to refuse to answer an interrogatory on the ground that it is "scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage or on any other ground". Finally, there is also the power given to the court, under Order XI, Rule 7, Civil Procedure Code, to set aside the whole set of interrogatories or any part of the interrogatories on the ground that they have been exhibited "unreasonably or vexatiously" or to strike them out on the ground that they are "prolix, oppressive, unnecessary or scandalous". For this purpose, the objector has to make an application within seven days of the service of the interrogatories and the power to order the interrogatories. Thus, the right to serve interrogatories and the power to order the interrogatories to be served and answered should be used with considerable care and caution so that it is not abused by any party. This is clear from the repeated safeguards mentioned above contained in Order XI against misuse of the power to require answer to interrogatories.

7. Some argument took place on the question whether the objections put forward by the company would fall under Order XI, Rule 6, or under Order XI, Rule 7, Civil Procedure Code. It was contended by Mr. Brij Lal Gupta on behalf of the company that, logically speaking, the stage of objections under Order XI, Rule 7, Civil Procedure Code, comes before the objections to answer interrogatories which are provided for by Order XI, Rule 6, Civil Procedure Code. I do not think that Rules 6 and 7 of Order XI, Civil Procedure Code, can be construed in such a narrow manner as not to overlap. The order in which they occur and the contents of these rules make it very difficult to say that the scope of each is really exclusive. It is, however, true that the application under Order XI, Rule 7, Civil Procedure Code, must be made within seven days after the service of the interrogatories. In other words, the stage

for an application under Order XI, Rule 7, Civil Procedure Code, comes immediately after the service of the interrogatories whereas the objections to particular interrogatories may be taken either immediately or after seven days of the service of the interrogatories in the affidavit in answer to the interrogatories. Thus, a party may choose to answer certain interrogatories and yet object to certain other interrogatories under Order XI, Rule 6, Civil Procedure Code, while answering the remaining interrogatories. The interrogatories have to be answered by means of an affidavit filed within ten days or within such other time as the court may allow under Order XI, Rule 8, Civil Procedure Code. Order XI, Rule 6, Civil Procedure Code, is intended to cover objections which may be taken in the affidavit to be filed in answer to the interrogatories. As the time allowed for objections under Order XI, Rule 6, Civil Procedure Code, is longer than the time permissible under Order XI, Rule 7, Civil Procedure Code, it is possible to contend that the stage for objections under Order XI, Rule 7, Civil Procedure Code, comes before the stage of objections under Order XI, Rule 6, Civil Procedure Code. But, in my opinion, the correct position is that the two rules are to a certain extent overlapping and must be read together. Within seven days of the service of the interrogatories objections can be taken both under Order XI, Rule 6, Civil Procedure Code, as well as under Order XI, Rule 7, Civil Procedure Code. The language of the two rules, viewed together, indicates that Order XI, Rule 6, is intended for objections to particular interrogatories whereas Order XI, Rule 7, Civil Procedure Code, is meant for a wholesale attack upon the very basis of the interrogatories. An application under Order XI, Rule 7, CPC can go beyond objecting to the propriety of particular interrogatories, and by means of it, a counter-attack can be made against the whole set of interrogatories or a part of them on the ground that they are mala fide.

8. In the case before me the objector has launched an attack upon the whole of interrogatories and also objects to answering the particular interrogatories on a number of grounds. Although the application is one under Order XI, Rule 7, Civil Procedure Code, it covers objections to individual interrogatories as well. It is not necessary for me to take up interrogatories one by one. In the course of the examination of the assertions made in the petition and in the affidavit supporting the petition, the counter-affidavit in reply, and the rejoinder-affidavit, I have been struck by the considerable number of facts which are already on the record. The contention put forward on behalf of the objector that whatever answers could be given by the objector on the material allegations in the petition are already contained in the counter-affidavit seems justified to a considerable extent. There also seems to be substance in the complaint that some of the interrogatories go beyond seeking admissions or asking for an explanation of anything left in a dubious state by the affidavits and are designed to constitute an inquiry into the manner in which the company has been conducting its business, entering into various transactions, and incurring various liabilities. As the extent to which such an inquiry could be permitted in proceedings for the winding up of a company itself

appeared doubtful, the whole question of the nature and object of winding up proceedings had to be gone into in considering whether the company should be compelled to answer the interrogatories which had been served.

9. I may here mention that there appeared to be an omission on the part of the petitioner who urged that the company had failed to answer questions. The petitioner had made no application under Order XI, Rule 11, Civil Procedure Code, for compelling the opposite party or any of its office bearers to answer any question. At the close of the arguments, however, an application was made under Order XI, Rule 11, Civil Procedure Code, by Mr. Jagdish Swarup on behalf of the petitioner praying for an order to compel the company and its representatives mentioned in the application to answer the questions contained in the interrogatories. This application also does not specify which question should be answered by which party mentioned in the application. Be that as it may, the objection on behalf of the company is that this application is misconceived. The stand taken by Mr. Brij Lal Gupta, on behalf of the company, is that the company has not omitted to answer any question. Indeed, he stated that the company is prepared to answer any question if the court so directs and that the stage for an application under Order XI, Rule 11, Civil Procedure Code, would arise only when an affidavit mentioned in Order XI, Rule 8, Civil Procedure Code, does not contain answers to the interrogatories. The contention is that the stage for an affidavit in answer to the interrogatories under Order XI, Rule 7, Civil Procedure Code, has not been disposed of. But I find that Order XI, Rule 8, Civil Procedure Code, does not automatically and without an order of the court give an objector time beyond ten days to object to particular interrogatories or to the whole set of interrogatories. If there is no affidavit within the time fixed by law it could be said that the objector had omitted to answer the interrogatories. The application under Order XI, Rule 11, Civil Procedure Code, was made at a very late stage. Nevertheless, I will consider the application and decide it now together with the application under Order XI, Rule 7, Civil Procedure Code.

10. Before proceeding further, I may deal with an aspect of the matter which has a bearing on the subject of interrogatories as well as on the question whether an application filed on March 26, 1968, for summoning witnesses should be granted. A proceeding for the winding up of a company is not identical with a suit which is governed entirely by the provisions of the Code of Civil Procedure. A petition u/s 433, Companies Act, can be made on one or more of six grounds out of which the last ground is of a general nature. Each of the five preceding grounds given in Section 433(a) to (e), Companies Act, can be generally proved by means of an affidavit. In the present case, most of the material facts are already on the record and a number of admissions which are necessary for the just and proper decision of the case, in so far as grounds in Section 433(a) to (e) are concerned, are also contained in the counter-affidavit filed. A difficulty, however, arises in so far as the last ground of the winding up petition is concerned that ground raises the question

whether it is just and equitable that the company should be wound up. After having been taken through a number of instances, provided by decided cases, of circumstances in which it is just and equitable that a company should be wound up, it is evident that this ground does not give a licence to any interested party or a shareholder or a creditor to come before the court and indulge in mere mud-slinging or ask for a winding up order merely because some transactions of a company are objectionable or even illegal. It is for the court to determine what is just and equitable on broad considerations which cannot be exhaustively catalogued. I am unable to see why it is not possible for the court to form an opinion about what is just and equitable in the circumstances of a particular case upon such allegations and counter-allegations as can be made by means of affidavits ordinarily. In exceptional cases some oral evidence may be necessary. It is, however, not the practice of a court dealing with winding up petitions in this country to allow either oral evidence or other methods available for adduction of evidence under the CPC as a matter of right. This is evident from the view taken in *In re Sulekha Works Ltd.*, [In Re: Sulekha Works Ltd.](#), where it is observed :

"....there is no inflexible rule or practice prohibiting the adducing of oral evidence or cross-examination in winding up applications. Where necessity suggests or experience requires it is open to the judge to allow oral evidence. But where the application for calling oral evidence is not only belated but is intended to retard and delay the progress of the winding up application, the oral evidence should be refused as expedition in winding up is absolutely necessary. "

11. In other words, although the rule of practice is there, it is not inflexible. Thus, the Calcutta High Court, like this court, also decides winding up petitions generally on affidavits and permits oral evidence only in exceptional cases.

12. I may mention that the Companies (Court) Rules, 1959, contain the procedure for the hearing of the winding up petitions. Section C, Part VII, Chapter XXVIII, of the Rules of this court, also provides rules governing the procedure to be followed in winding up proceedings. Under Rule 34, Part VII, Chapter XXVIII, the petition has to be supported by an affidavit. Rule 40, Part VII, Chapter XXVIII, provides for the affidavits-in-opposition or in support of the petition, which have to be filed not less than seven days before the date of hearing. Under Rule 41, Part VII, Chapter XXVIII, of the Rules of this court, an affidavit in reply to the affidavit-in-opposition has to be filed not less than three days before the date of the hearing of the petition. This is in conformity with the Rules 103 and 104 of the Companies (Court) Rules, 1959, providing for affidavits in opposition and affidavits in reply. There is, of course, Rule 9 of the Companies (Court) Rules, which provides:

" Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

13. I may also mention that even if, by reason of Section 141, Civil Procedure Code, and Rule 9 of the Companies (Court) Rules, 1959, the procedural provisions of the CPC may be utilised for effectively and expeditiously deciding winding up petitions, no party can claim that the provisions of the CPC apply to winding up proceedings as a matter of right. These proceedings are governed by the special rules or procedure laid down for winding up proceedings, although the powers conferred by the CPC can be utilised under these rules if it is necessary to do so in the interests of justice. I may also mention that even if the provisions of the CPC were applied, the provisions of Order XIX, Civil Procedure Code, enable the court to order that facts which can be conveniently proved by means of affidavits may be so proved. The court has the power, under Order 19, Rule 2, Civil Procedure Code, to order the attendance of any person swearing an affidavit for cross-examination. In my opinion, the matters contained in Section 433(a) to (f) can, as a rule, be decided quite easily and conveniently by means of affidavits. It is only in very rare and exceptional cases that oral evidence is necessary.

14. My object in dealing with the nature of a winding up proceeding and the procedure to be followed on winding up petitions is to indicate that the whole paraphernalia of powers and procedural devices contained in the CPC is not available to a party automatically in proceedings on winding up petitions which are different from ordinary suits. In suitable cases the power to serve interrogatories can certainly be utilised usefully to shorten proceedings. In the instant case I find that a very large number of questions have been framed and decisions on the individual objections to each one of the ninety-four questions framed will, instead of shortening proceedings, considerably lengthen the proceedings. A number of questions, although covered by the assertions made in the petition or the counter-affidavit, appear to be such that they could be more properly asked upon cross-examination of witnesses. After going through the affidavits filed, as already indicated, I find that there is ample material on the record to enable a satisfactory decision on each of the issues framed on the grounds taken.

15. A winding up petition also differs from an ordinary civil suit inasmuch as the petitioner has to show the preponderating weight of justice and equity in favour of a winding up. This can generally be done by evidence given through affidavits on broad questions rather than by weighing of evidence of both sides in golden scales. As the evidence already on the record in the form of affidavits is quite considerable and some of the questions are of a kind which may be asked, if at all, in cross-examination to discredit a deponent, I do not think it necessary to compel the company to answer all the interrogatories. Nevertheless, I am prepared to pass an order under Order XI, Rule 11, Civil Procedure Code, directing the company to answer, through an affidavit or affidavits, the following questions so that the oral evidence sought to be introduced by means of an application filed on 26th March, 1968, may not be necessary at all:

(i) Question No. 9 relating to the electricity dues still outstanding.

(ii) Questions Nos. 10 to 12 relating to the extent to which provident fund contributions were due and penalties were imposed in this connection. A copy of an agreement between the employers and employees may be filed with the affidavit-in-reply.

(iii) Questions Nos. 27 to 31 relating to certain financial transactions and the alleged irregularities said to have been found by the State Bank of India.

(iv) Question No. 35 relating to the outstanding demands of tax in so far as it has not been replied to.

(v) Questions Nos. 23, 24 and 40 relating to the reports and objections alleged to have been made by the auditors. Copies of the auditors' reports and objections may be filed with the affidavit-in-reply.

(vi) Question No. 36 relating to the demands and dues in respect of sales tax and municipal taxes in so far as this question has not been replied to already,

16. It appears to me that answers to the above-mentioned interrogatories, given by the company by means of an affidavit or affidavits of such person or persons as it may choose from amongst those named, will amply meet the requirements of justice and supplement such evidence as is already on the record. I may also observe that I think that a detailed inquiry into the manner in which the company is conducting its business with a view to taking some punitive action against the company is not the object of winding up proceedings. Such an object can be served by other action under the various statutory provisions such as the Industries Development and Regulation Act, 1951. I may also observe that this petition is by a party whose claim as a creditor is still in dispute. The petitioner became a creditor because its first appeal was allowed by this court so that a decree for a sum of Rs. 3,03,992 passed in favour of the company and against the petitioner by the Additional Civil Judge of Kanpur was set aside. The decretal amount which had been realised by the company is the debt now claimed to be due to the petitioner. The company has already filed an appeal before the Supreme Court so that the claim is disputed, but no stay order has been obtained. The petitioner is said to have proceeded u/s 144, Civil Procedure Code, to obtain restitution, but it has not been shown to what extent the restitution proceedings have succeeded in enabling the petitioner to realise these dues. One of the questions which will have to be decided on the winding up petition is whether this court should refuse a winding up order on the ground that the petitioner has an alternative means of relief. The most important or main question to be decided appears to be whether the company is commercially insolvent, although, as already observed, other questions have also been raised.

17. The amount of evidence which is already on the record by means of affidavits, together with the answers to the interrogatories which I hereby direct under Order XI, Rule 11, Civil Procedure Code, the company to give, would seem to be enough for deciding the matters in issue. The Company is free to submit the affidavit or affidavits of any one or more of the persons noted in the application for service of interrogatories as the petitioner has not specified which question has to be answered by which person.

18. The result is that I allow the application under Order XI, Rule 11, Civil Procedure Code, to the extent indicated above. I also allow the application of the company under Order XI, Rule 7, Civil Procedure Code, to the extent that I set aside the remaining interrogatories. I dismiss the application of the petitioner filed on March 26, 1968, for summoning witnesses. I do so because, after going through the material already on the record, oral evidence does not appear to me to be necessary in this case at this stage at any rate.

19. The affidavit or affidavits-in-reply to the interrogatories must be filed by the 20th of July, 1968. The petitioner may file affidavits-in-reply by 27th of July. The case will be listed for final hearing on 29th of July, 1968. This consolidated order is being passed on three applications, one dated March 26, 1968, for summoning witnesses, another dated March 27, 1968, under Order XI, Rule 7, Civil Procedure Code, and the third under Order XI, Rule 11, CPC read with Section 141, Civil Procedure Code, dated May 16, 1968, which are decided in the manner indicated above. The parties will bear their own costs.