

(1880) 01 CAL CK 0006

Calcutta High Court

Case No: None

Sham Kishore Mundle

APPELLANT

Vs

Shoshibhoosun
Biswas

RESPONDENT

Date of Decision: Jan. 29, 1880

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 121

Citation: (1880) ILR (Cal) 707

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

There is no doubt that the practice should be settled, because the procedure is new, and it is very important that there should be a settled practice. I do not entertain any doubt as to what practice is most convenient and most in accordance with the Civil Procedure Code.

2. The first section of the Code which deals with interrogatories is Section 121, which says: "Any party may, at any time, by leave of the Court, deliver through the Court interrogatories in writing for the examination of the opposite party." Now what that section contemplate is, I think, first, leave to interrogate; and secondly, the service of the interrogatories through the Court. Following on that section, we have a rule of Court which makes the matter a little more clear. That rule is as follows: "When interrogatories are ordered by the Court to be delivered u/s 121 of the Code of Civil Procedure, two copies of each set of interrogatories shall be tendered to the Registrar, who, when the same are tendered by the plaintiff, shall forthwith, or when the same are tendered by the defendant, shall, on being satisfied that the defendant has filed a written statement, retain and file one of such copies and deliver the other copy for service to the attorney of the party tendering the interrogatories, or if there be no attorney, to the sheriff, after adding at the foot thereof his signature and

official designation, after the words "Let this be served by the plaintiff's attorney [or the defendant's attorney or the sheriff, as the case may be]" (Rule 274, Belchamber's Rules and Orders, p. 152.)

3. Now I think that the section and the rule together clearly contemplate that it is the duty of the Court to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage, what questions the party to be interrogated should be compelled to answer. In the present case that procedure seems to have been followed. Leave to interrogate was granted to the plaintiff. The order was, "that the plaintiff be allowed to interrogate." In future, I think these applications, should be made in chambers by petition, like other applications, and the order should be, "that the applicant be at liberty to interrogate."

4. I think Mr. Bonnerjee is right when he says that the order stands on the same footing as any other order made in chambers on ex parte applications, and that the parties have a right to come into Court and ask that the order be reconsidered, and, if found to have been wrong, set aside. Therefore, if an order is made giving leave to interrogate, the party ordered to answer has a right to come into Court to have the order set aside, if the case is one in which interrogatories ought not to have been allowed. If the order was not wrong, and the case was a proper one for the administration of interrogatories, then other courses are open to a party objecting to the interrogatories administered. If the interrogatories are scandalous, or in any way an abuse of the process of the Court, the Court, no doubt, may interfere at any stage. In other cases the party interrogated might omit to answer the interrogatories to which he objects, at his peril. Then the course is for the interrogating party to apply to the Court u/s 127 for an order requiring the other party to answer, or to answer further, either by affidavit or by viva voce examination, as the Judge may direct; or the party interrogated may take a more cautious course; he may file his affidavit in answer, stating in it his objections to answer such questions as he objects to: and in this case the interrogating party, if dissatisfied, can apply u/s 127.

5. Section 36 has been referred to, but I have no doubt the Court will not exercise the powers there given except in extreme cases.

6. It follows that, in my judgment, the proper course is, that if the defendant in this case desires to object to any of the interrogatories, he may abstain from answering or state his objections in his affidavit. If he does so object, then the plaintiff may take steps u/s 127 to compel him to answer. The present application to disallow the questions is in my opinion wrong.