

(1954) 07 CAL CK 0034

Calcutta High Court

Case No: Civil Rule No. 382 of 1954

Ram Chandra Choudhury

APPELLANT

Vs

Ballygunge Estates Limited

RESPONDENT

Date of Decision: July 28, 1954

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 1, Order 9 Rule 2, Order 9 Rule 7

Citation: (1956) 2 ILR (Cal) 588

Hon'ble Judges: Sarkar, J; S.R. Das Gupta, J

Bench: Division Bench

Advocate: Bansarilal Sarkar and Narendra Nath Banerjee, for the Appellant; Charu Chandra Ganguly, for the Respondent

Judgement

S.R. Das Gupta, J.

This is a petition for revision of an order passed by the Third Subordinate Judge, Alipore. The order complained of was passed on October 1, 1953, on the application of the Plaintiff, directing only one of the interrogatories to be answered by the Plaintiff. The matter arises in this way.

2. This suit was filed by the Plaintiff for recovery of Rs. 19,891 in the court of the Third Subordinate Judge, Alipore. On September 21, 1953, an application was made by the Defendant under Rules 1 and 2 of Order XI of the CPC for directing the Plaintiff to answer the interrogatories annexed to the petition. It appears that a copy of the petition was served on the Plaintiff but the Plaintiff was not present at the hearing of that application. The learned Subordinate Judge allowed the prayer of the Defendant and the Plaintiff was directed to answer the interrogatories, on oath, by October 1, 1953. On October 1, 1953, the Plaintiff made an application to the court objecting to the said interrogatories. The said application was heard by the then learned Subordinate Judge and by his order dated January 21, 1954, the learned Subordinate Judge directed that the Plaintiff should answer only one of such

interrogatories. It is against that order that the present application has been made.

3. The learned advocate for the Petitioner contends before us that the order was passed without jurisdiction. He further contends that the interrogatories, which his client wanted the Plaintiff to answer, were all pertinent to the case and should have been ordered. As for jurisdiction, the learned advocate contended before us that an order having already been made on September 21, 1953 the learned Subordinate Judge had no jurisdiction to make the present order dated October 1, 1953, on the application of the Plaintiff. We are unable to accept this contention.

4. As I have indicated, the application, which was made by the Defendant on September 21, 1953, was an application under Rules 1 and 2 of Order XI of the Code of Civil Procedure. Rule 1 of the Order XI provides as follows:

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 persons 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.

5. Rule 2 reads as follows:

On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court. 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 admission 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.

6. The application, which was made on September 21, 1953, was thus an application made under Rules 1 and 2 of Order XI. Such applications are made ex parte. The present application which had been made by the Plaintiff and upon which the order in question was passed by the learned Subordinate Judge on January 21, 1954, was an application under Rule 7 of Order XI of the Code of Civil Procedure. That rule provides that

Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven day after service of the interrogatories.

7. Thus reading Rules 1 and 2 along with Rule 7 the position is that a party; who wants interrogatories to be answered by his opponent, shall, in the first instance, submit the said interrogatories to the court and apply for an order from the court for leave to serve such interrogatories upon the opposite party and if such leave is given then the interrogatories which are allowed are to be served on the opposite party, and thereafter the opposite party may, within seven days of such service, make an application under Rule 7 to have the interrogatories set aside on any of the grounds mentioned in the said rule. The present application is, as I have just now indicated, an application under this rule, and, in our opinion, in order.

8. The learned advocate for the applicant then contended that the said application which was made by the Plaintiff on October 1, 1953, was made beyond time. He pointed out that such application under Rule 7 must be made within seven days after the service of the interrogatories, but the said application was not made within the said period. In support of this contention the learned advocate drew our attention to the fact that on September 21, 1953, his client made the application for leave to serve the interrogatories and on the same day a copy of the said petition was served on the Plaintiff; and that being so, the present application which was made after expiry of seven days from September 21, 1953, must be held to have been made beyond time. This contention of the learned advocate, in our opinion, has no substance. It appears from the order-sheet kept by the learned Judge that the copy of the petition was served before the order was made by the learned Judge on September 21, 1953. But under the rules to which I have referred the interrogatories had to be served after an order is made under Rule 2 of Order XI of the CPC granting leave to serve the interrogatories. If a party who prays for such leave serves the petition, which may contain the interrogatories asked for, before the order is made, he cannot say that there has been service of the interrogatories as required by the rules so that the period of seven days mentioned in Rule 7 would begin to run from the date of such service. The interrogatories must be served after leave has been given by the court to serve such interrogatories. In the present case, it appears that before the leave asked for was granted the interrogatories were served. In the circumstances, the application which was made under Rule 7 of Order XI of the CPC by the Plaintiff cannot be said to be barred by limitation. I should also mention that the Petitioner in his petition before us has not stated anywhere as to the time when the interrogatories were served, if at all, after the order dated September 21, 1953, was made. The Petitioner does not even state in his petition that the interrogatories were at all served after the order granting such leave was made. It is for the Petitioner to satisfy us that the order made by the learned Judge was made without jurisdiction; and to succeed in his contention the Petitioner would have to establish that the application was made beyond time and this he has failed to do. In the circumstances, we are of opinion that this petition must fail.

9. The Rule is discharged with costs.

Sarkar, J.

10. I agree.