

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) NO.667/2009

% **Date of decision: 12<sup>th</sup> January, 2010**

**CANARA BANK** ....Petitioner

Through: Mr. Pradeep Dewan & Mr. Rajiv Samaiyar,  
Advocates

**Versus**

**RAJIV TYAGI & ASSOCIATES & ANR.** ... Respondents

Through: Mr. Rajiv Tyagi, respondent in person.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in the Digest?                | Yes |

**RAJIV SAHAI ENDLAW, J.**

1. This petition under Article 227 of the Constitution of India has been preferred by the defendant no.1 in a suit for recovery of Rs.4,68,796/- with interest and costs instituted by the respondent no.1/plaintiff. The petitioner /defendant no.1 (hereinafter called Bank) is aggrieved from the order dated 28<sup>th</sup> March, 2009 of the trial court dismissing the application of the Bank for permission to serve interrogatories on the respondent no.1/plaintiff. This court

while issuing notice of this petition vide ex parte order dated 20<sup>th</sup> July, 2009 which remains in force stayed further proceedings in the suit before the trial court.

2. The respondent no.1/plaintiff, in the plaint in the suit from which this petition arises, pleaded that it was rendering legal advice and services to the Bank; that it was an empanelled lawyer /law firm with the Bank; that the Bank had devised a schedule of fee for engaging advocates for handling legal matters before various courts/foras and as per which schedule 50% of the fee was to be paid upfront at the time of entrustment of the case and the balance 50% upon disposal of the matter and in addition, the fee for interlocutory applications, appeals etc.; that the respondent no.1/plaintiff used to raise bills on the Bank which used to be paid after considerable delay and many of the bills remained unpaid. The respondent no.1/plaintiff claimed a sum of Rs.4,68,796/- to be due from the Bank towards outstanding invoices due as per the statement of accounts filed as Annexure 2 to the plaint; the true and correct copies of the bills raised during the period 19<sup>th</sup> October, 2000 to 14<sup>th</sup> December, 2004 was annexed to the plaint as Annexure 1.

3. The Bank contested the suit by filing the written statement. In the said written statement the Bank dealt with several of the bills in the statement Annexure-2 and took pleas with respect thereto, either of several of the bills being for the same service, or denying the correctness of the bill or pleading the bill to have been paid and also relying upon the admissions/acknowledgments of the respondent no.1/plaintiff of amounts under several bills being not due.

4. From the list of dates handed over by the counsel for the respondent no.1/plaintiff, it appears that after the completion of pleadings and before the framing of the issues, the Bank filed the application under order 11 Rule 1,2 & 4 read with Section 151 of the CPC as aforesaid for permission to deliver interrogatories. In the said application, it was inter alia pleaded that the Bank

had in its written statement shown/pleaded that out of the 85 bills claimed by the respondent no.1 / plaintiff to be due, majority had been settled / paid, with respect to some, the details / information were yet to be furnished by the respondent no.1/plaintiff and received by the Bank, with respect to the others nothing was payable. It was further pleaded that the respondent no.1/plaintiff in the replication has given vague and evasive reply to the specific averments in the written statement of the Bank and avoided to specifically admit or deny the pleas taken by the Bank with respect to different bills. It was pleaded that for effective decision of the matter in controversy, it was necessary that the respondent no.1/plaintiff answers the 112 interrogatories annexed to the application.

5. The respondent no.1/plaintiff contested the application. It was contended that by way of interrogatories, the Bank was seeking proof of its averments in the written statement; that the interrogatories could not be answered also for the reason of the documents being in possession and power of the Bank; it was admitted that while some of the invoices may have been settled in full but it was averred that other invoices remained partly paid or unpaid; that payments made by the Bank from time to time were not accompanied with any covering letter intimating the relative bill numbers; that it was for this reason, that particulars of the bills raised and of the payments received had been given in Annexure-2 to the plaint and the amounts outstanding shown; it was further averred that the Bank had in its power and possession the material from which the interrogatories could be answered. The trial court has vide the order impugned in this petition dismissed the application holding that the questions posed by way of interrogatories could be asked during the course of the cross examination.

6. The reasoning given by the trial court for dismissal of the application is certainly not tenable in law. Merely because the interrogatories could form the question which could be put in cross examination is no basis for denying the interrogatories. Certainly, whatever can form the subject matter of

interrogatories can form the subject matter of cross examination. But notwithstanding the same a provision therefor has been made in the CPC. The interrogatories are aimed at facilitating proof of the case and to save the costs which may be incurred in adducing evidence to prove the necessary facts. Cross examination may not be necessary in view of the replies to the interrogatories. Thus, the test to be applied in dealing with an application for discovery by interrogatories is not whether it can form subject matter of cross examination or not but is of relevancy and expediency.

7. In the present case, the suit is for recovery of balance amount stated to be a due on a large number of bills stated to have been raised by the respondent no.1/plaintiff on the Bank. From the reply of the respondent no.1/ plaintiff to the application for interrogatories, the respondent no.1/plaintiff has admitted that some of the bills which were claimed to be due may have been paid in full or in part. The respondent no.1/plaintiff attempted to explain away the same by contending that the payments made by the Bank could not be related to the bills owing to the Bank not specifying that the payments was with respect to which bill. The question between the parties is thus of accounts. The queries / questions with respect to such accounts are best answered by delivery of interrogatories. If such queries were to be made in cross examination, the witness / plaintiff may not be in a position to answer the same immediately, for non availability of requisite material. The same would result either in the cross examination being deferred leading to delays and costs or to evasive answers. On the contrary, interrogatories can be answered by the party at its leisure and after perusing all records available at its office/residence and also by making enquiries, if any, necessary from its other staff members in know of the matter. Answers to the interrogatories will also lead to reduction in the time taken by the court in recording cross examination and help in crystallizing the cross examination. The counsel for the Bank has in this regard correctly relied upon

(i) **A.K. Aggarwal Vs. Shunti Devi** 1996 Rajdhani Law Reporter 60 laying down that the provision of interrogatories has to be liberally used and parties ought to be encouraged to use them in the course of the trial; that one of the core objects of interrogatories is to save evidence, diminish the burden of proof and to save expenses; a party has a right to interrogate with a view to obtain an admission from the adversary. It was expressly held that it was no reason for declining to answer the interrogatory that the same information may be got by cross examination at trial. (ii) **Sharda Dhir Vs. Ashok Kumar Makhija** 99 (2002) DLT 350 laying down that the object of interrogatories is that the party knows the nature of his opponent's case before hand in order to meet it at the hearing; that in a given case, the pleadings may not sufficiently disclose the nature of the parties case and in order to make good the deficiencies, this rule has been enacted; that the court should not be hyper-technical at the stage of serving the interrogatories. The only defence to service of interrogatories can be when the same do not relate to the matter in question or are scandalous (iii) **Bhakta Charan Mallik Vs. Nataorar Mallik** AIR 1991 Orissa 319 to the same effect.

8. The counsel for the respondent no.1/plaintiff being fully aware of the aforesaid position in law opposed this petition on the technical plea of the scope of this court in exercise of jurisdiction under Article 227 of the Constitution of India to interfere with the order impugned. Reliance was placed on **State of A.P. Vs. P.V. Hanumantha Rao** (2003) 10 SCC 121 to contend that the jurisdiction has to be exercised against the decision making process and not to correct the errors on merits and which is the domain of an appeal. Reference is also made to **M/s AFL Developers Pvt. Ltd. Vs. Smt. Veena Trivedi** AIR 2000 Delhi 354 and **Rajasthan Golden Transport Co. (Pvt.) Ltd. Vs. Avon Footwear Industries Pvt. Ltd.** AIR 1986 Delhi 286 and upon **Raj Narain Vs. Smt. Indira Nehru Gandhi** AIR 1972 SC 1302 in all of which interrogatories which were not relatable to the subject matter for adjudication and/or which were found to be of a roving or

fishing nature were not permitted to be delivered and it was also held that Revision did not lie against an order striking down interrogatories. In ***Raj Narain Vs. Smt. Indira Nehru Gandhi*** (Supra) the Supreme Court held that the questions that will be relevant during cross examination are not necessarily relevant as interrogatories. It was held that interrogatories served must have a reasonably close connection with the matters in question.

9. However, it does not appear to have been the plea of the respondent no.1/plaintiff that the interrogatories were scandalous or are irrelevant. Neither does any such plea appear from the reply filed to the application nor from the reasoning in the order under challenge. The sole defence was that the questions, subject matter of interrogatories, could form subject matter of cross examination. This is however not found to be tenable and has been already held by this court to be not a reason to deny interrogatories.

10. During hearing also I had put to the counsel for the respondent no.1/plaintiff as to which of the interrogatories were scandalous or are irrelevant; attention was only drawn to interrogatories at question no.21 and 22, as to whether the respondent no.1/plaintiff was an advocate on record of the Supreme Court or a designated senior advocate. It was urged that it was to the knowledge of the Bank that the plaintiff was neither and the attempt was to embarrass the plaintiff. Though the counsel for the respondent no.1/ plaintiff commented on the large number of interrogatories but beyond the aforesaid could not point out any other which may be irrelevant or scandalous.

11. As far as the large number of interrogatories is concerned, it has to be judged in the light of the nature of the suit. The suit is based on a statement of account, bills raised and the balance thereon. At this stage, it appears to have been said that as many as 84 bills were outstanding. The defence of the Bank to the suit is also bill wise. Seen in this context over, 100 interrogatories with reference to each and every bill, cannot be said to be excessive. It also cannot be

said that any of the interrogatories are roving or fishing in nature. The plea of the respondent no.1/plaintiff of his not being able to answer the interrogatories because the records thereof are in possession of the Bank also as a general rule does not inspire confidence. It is the respondent no.1/plaintiff who has approached the court stating monies to be due from the Bank. The respondent no.1/plaintiff must have made out a case with the knowledge that he will be required to prove the same. The suit is not for accounts. He now faced with the interrogatories cannot hide behind the plea of the material for answering the same being available with the Bank. Even if it is the case that the Bank need not serve the interrogatories because it can find the answer thereto in its own records, interrogatories would still lie. As laid down in the judgment cited above, the Bank is entitled to know the case of the respondent no.1 / plaintiff qua each and every bill so as to meet the same at the time of trial.

12. As far as the argument of the respondent no.1 / plaintiff, of this court in exercise of jurisdiction under Article 227 of the Constitution of India being not entitled to interfere with the order on an application to deliver interrogatory, this court in *Rajasthan Golden Transport Co. (Pvt.) Ltd. Vs. Avon Footwear Industries Pvt. Ltd.* (Supra) held the same to be not interferable in exercise of power under Section 115 of the CPC, only upon finding that the order had not occasioned any failure of justice. However, in the present case, the reasoning by the trial court for denying the interrogatories is found to be contrary to the law enunciated in the judgments aforesaid by this Court. It is also found that unless the respondent no.1/plaintiff answers the interrogatories, the evasive stand in the replication for which the Bank is blaming the respondent no.1 / plaintiff may continue at the time of trial also. The respondent no.1 / plaintiff in the confines of his chamber and with reference to all records is in a position to take a definite stand qua the interrogatories with respect to the different bills. The Bank would then be better equipped to meet the claim of the plaintiff.

13. This petition therefore succeeds. The order dated 28<sup>th</sup> March, 2009 of the trial court dismissing the application for interrogatories is set aside. The application for serving interrogatories is allowed. The interrogatories no.21 and 22 which were stated to be scandalous are also ordered to be answered since the schedule rates of fee for a designated senior advocate and advocate on record are different and the said position being relevant for adjudication of the matter in controversy. The respondent no.1/plaintiff to answer the interrogatories in accordance with law. However, in the facts of the case, no order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

January 12, 2010  
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