

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SATHISH NINAN

TUESDAY, THE 19TH DAY OF JUNE 2018 / 29TH JYAISHTA, 1940

OP(C).No. 2678 of 2017

IA NO. 477/2017 IN OS NO. 266/2016 OF MUNSIFF COURT CHALAKUDY

PETITIONER/DEFENDANT

JOB JOSE
S/O.JOSE, MAINATTIPARAMBIL HOUSE, WEST KORATTY DESOM,
MAMBRA KALLUR THEKKUMURI VILLAGE,
WEST KORATTY CHALAKUDY TALUK,
REPRESENTED BY HIS POWER OF ATTORNEY, BINEESH,
S/O.VARKEY, CHANKAN HOUSE, AGED 32, WEST KORATTY DESOM,
CHALAKUDY TALUK, THRISSUR DISTRICT.

BY ADV.SRI.T.N.MANOJ

RESPONDENT/PLAINTIFF:

SUDHARMAN,
PANIKKASSERY VEETIL KUTTAPPAN, PARAKKADAVU VILLAGE,
REPRESENTED BY HIS POWER OF ATTORNEY, NISHAD,
S/O.PANIKKASSERY VEETIL RAMAKRISHNAN,
PARAKKADAVU VILLAGE, KODUSSERY KARA. 680 331.

BY ADVS. SRI.S.SUDHISH KUMAR
SRI.K.B.DAYAL
SRI.K.Y.TOMY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-06-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sdr/-

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE PLAINT IN OS 226/16, PENDING ON THE FILES OF THE MUNSIF COURT AT CHALAKUDY.
- EXHIBIT P2 TRUE COPY OF THE WRITTEN STATEMENT IN OS 226/16, PENDING ON THE FILES OF THE MUNSIF COURT AT CHALAKUDY.
- EXHIBIT P3 TRUE COPY OF THE INTERROGATORIES FILED BY THE DEFENDANT IN OS 226/16, PENDING ON THE FILES OF THE MUNSIF COURT AT CHALAKUDY.
- EXHIBIT P4 TRUE COPY OF THE ANSWERS SUBMITTED BY THE PLAINTIFF TO THE INTERROGATORIES SUBMITTED BY THE DEFENDANT.
- EXHIBIT P5 TRUE COPY OF THE ORDER IN IA 478/17 IN OS 226/16, BY THE MUNSIF COURT AT CHALAKUDY.
- EXHIBIT P6 TRUE COPY OF THE INTERROGATORIES FILED BY THE DEFENDANT IN OS 226/16, BEFORE THE MUNSIF COURT AT CHALAKUDY.
- EXHIBIT P7 TRUE COPY OF THE OBJECTION FILED BY THE PLAINTIFF TO THE INTERROGATORIES FILED BY THE DEFENDANT IN OS 226/16.
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 3-6-2017 IN IA 477/17 IN OS 226/16 OF THE MUNSIF COURT AT CHALAKUDY.

RESPONDENTS EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

sdr/-
22.06.18

'C R'

SATHISH NINAN, J.

O.P.(C) No.2678 of 2017

Dated this the 19th day of June, 2018

JUDGMENT

Application seeking permission to serve interrogatories under Order XI Rule 1 of the Code of Civil Procedure (herein after referred to as the 'Code'), was dismissed by the court below for the reason,

- i) Similar application was filed earlier
- ii) The questions could be put to witness at the time of cross examination.

2. Both the reasons given by the court below are not sustainable as is explicit from the provisos to Order XI Rule 1. It is relevant to refer to them, and are extracted hereunder.

“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.”

3. A bare reading of the first proviso reveals that more than one set of interrogatories could be served, the only restriction being that it can be done only with the permission of the court. The Code gives power to the Court to grant permission to deliver further interrogatories in appropriate cases. The court shall consider the relevancy of the interrogatories and pass appropriate orders. The mere fact that application was filed earlier seeking to deliver interrogatories, is not a ground for dismissing the application. The Bombay High Court in **M/s.Kishorilal Babulal v. Ramlal Ganeshprasad Tiwari and Ors.[AIR 2014 Bombay 19]** held thus,

“.....As per the first proviso, a party shall not deliver more than one set of interrogatories to the same party without an order of the Court for that purpose. Apparently,therefore, while delivering the interrogatories, leave of the Court is required. If certain points crop up subsequently and are found relevant, then permission can be granted to give the interrogatories second time. Proviso places restriction on delivering more than one set of interrogatories to the same party. However, legislation did not stop there, but further clause “without an order for that purpose” is added. These words undoubtedly confer power upon the Court to allow a second set of interrogatories to the same party at a time in an appropriate case. If the Legislature intended to restrict the delivery of interrogatories to one set to the same

party, then it would not have mentioned the entailing clause in the proviso, i.e. "without an order for that purpose".

The court below ought to have considered the application on its merits.

4. The second proviso provides that, all questions that could be put to a witness during cross examination cannot be delivered as interrogatory. Only the questions which relate to any matter in question in the suit could be made the subject of interrogatory. The restriction regarding an interrogatory is that it must relate to any matter in question in the suit. Therefore, a question which relates to 'matter in question' in the suit, could be served as an interrogatory. Questions which may not be relevant as interrogatories might be admissible while cross examining a witness. In **Raj Narain v. Smt. Indira Nehru Gandhi and other** [AIR 1972 SC 1302] the Apex Court held,

"Questions that may be relevant during cross-examination are not necessarily relevant, as interrogatories. The only questions that are relevant as interrogatories are those relating to "any matters in question". The interrogatories served must have reasonably close connection with "matters in question".

The same view was expressed by this court in **Eldho Kuruvila v.**

K.G.Abraham and others [2012(1)KLT SN 22]. The mere fact that questions could be put to witness at the time of cross examination is not a ground to deny serving of interrogatories. The said reasoning of the court below is also not sustainable.

5. Interrogatories help in shortening trial. The court needs to consider whether the matters as sought for are relevant and if they relate to the matter in question in the suit.

In the result, the Original Petition is allowed. The impugned order dated 03.06.2017 in I.A.No.447/2017 is set aside. The court below shall consider the application afresh and pass appropriate orders, after hearing both sides, in the light of the above.

Sd/-

**SATHISH NINAN,
JUDGE**

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