

Tara Batra vs Punam A.Kumar & Ors. on 10 September, 2021

Author: Amit Bansal

Bench: Amit Bansal

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 18th August, 2021
Pronounced on: 10th September, 2021

+ CM(M) No.925/2019

TARA BATRA

..... Pet
Through: Ms. Diya Kapur & Mr. Raghav
Anand, Advocates.

Versus

PUNAM A KUMAR & ORS.

..... Respondents
Through: Mr. Naveen Kumar Chaudhary,
Advocate for R-1.
Mr. Bheem Sain Jain, Advocate for
SBI.

AND

+ CM(M) 581/2020 & CM No.29582/2020 (for stay)

TARA BATRA

..... Pet
Through: Ms. Diya Kapur & Mr. Raghav
Anand, Advocates.

Versus

PUNAM A KUMAR & ORS.

..... Re
Through: Mr. Naveen Kumar Chaudhary
Advocate for R-1.
Mr. Bheem Sain Jain, Advoc
SBI.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

CM(M) No.925/2019 & CM(M) No.581/2020

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Signing Date:11.09.2021
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JUDGMENT

AMIT BANSAL, J.

1. Both these petitions are between the same parties and are based on common questions of fact arising out of the same suit and are therefore, being disposed of by this common judgment.

2. CM(M) 925/2019 is a petition under Article 227 of the Constitution of India preferred by the petitioner, who is the plaintiff no.1 in CS(OS) No.58999/2016, against the dismissal dated 10th July, 2017 of the application filed by the petitioner under Order XI Rule 1 of the Civil Procedure Code (CPC) seeking leave to administer interrogatories on respondent no.2 bank (defendant no.2 before the Trial Court).

3. CM(M) 581/2020 is a petition under Article 227 of the Constitution of India preferred by the petitioner, against the impugned order dated 11th February, 2020 whereby the two applications filed on behalf of the petitioner under Order XI Rules 12 and 13 of the CPC seeking discovery on oath and production of documents were dismissed.

4. The plaint from which the present petitions arise was filed by the petitioner and respondents no.3 and 4, being children of the petitioner, for declaration, recovery and rendition of accounts, pleading that (i) the petitioner was the divorced wife of one Sh. Kiranjit Singh Paintal who expired on 4th January, 2001 and respondents no. 3 and 4 are the children of the petitioner and late Sh. Kiranjit Singh Paintal; (ii) Mrs. Veena Paintal was the mother of the deceased husband of the petitioner, who expired on 4th April, 2010; (iii) before her death, late Mrs. Veena Paintal had executed a Power of Attorney in favour of her daughter, respondent no.1 (defendant no.1 before the Trial Court), and handed her over possession of all relevant documents, including fixed deposit receipts (FDRs) in which the petitioner and the respondents no.3 and 4 were nominated as beneficiaries; (iv) late Mrs. Veena Paintal left behind a Will, in terms of which she bequeathed upon the petitioner/respondents no.3 and 4, inter alia, the property bearing no.C-410, Defence Colony and all monies in bank and fixed deposits in which the nomination was made in favour of the petitioner and respondents no. 3 and 4; (v) in respect of one of the fixed deposits made in respondent no.2 bank, where the petitioner had been made the nominee, the name of respondent no.1 was subsequently added as a joint holder by illegally tampering with and overwriting on the said FDR; and, (vi) the prayer in the suit was for recovery of amounts illegally appropriated by the respondent no.1 on account of tampering of the FDR by overwriting the name of the respondent no.1 and for rendition of accounts and directing the respondents no.1 and 2 to disclose details of all FDRs made wherein the petitioner and/or respondents no. 3 and 4 had been named as nominees and the amounts so encashed by respondent no.1.

5. The said suit was contested by respondents no.1 and 2 by filing written statements. The petitioner and respondents no.3 and 4 filed IA No.6763/2013 under Order XI Rules 12 and 13 of the CPC for discovery and production of documents, stating that the said documents are relevant for proper adjudication of the suit. In respect of respondent no.1, discovery and production of the following documents was sought:

"i. Receipts and other related documentation of the Fixed Deposits made by the Late Mrs. Veena Paintal, wherein the plaintiffs or one of them have/had been named nominees/beneficiaries."

In respect of respondent no.2, discovery and production of the following documents was sought:

i. The documents, provided to Defendant No. 2, in pursuance of which the changes were made in FDR A/c No. 30123248804, these changes being that Defendant No. 2 was named as joint account holder in this Fixed Deposit Account, and the mode of operation was changed from 'Survivor' to 'Either or Survivor' ii. Other documents relating to this act.

iii. Fixed Deposit Receipts and nomination forms, other than FDR A/c No. 30123248804, made by Mrs. Veena Paintal, wherein she had nominated the plaintiffs or one or more of them as nominees or as fixed deposit account holders or as beneficiaries.

iv. The documents on the basis of which changes, if any, have been made, subsequent to the date of creation of these fixed deposit accounts."

6. On 27th May, 2015, the issues were framed by this Court and the following issues, relevant for the adjudication of the present petition, are set out below:

"1. Whether the defendants have in conspiracy wrongly encashed the fixed deposit with the account No. 30123248804 which was in the name of Ms. Veena Pental. If so, its effect? OPP xxxxx xxxxx xxxxx

3. Whether the plaintiff is entitled for rendition of accounts from the defendant of all deposits done by Ms. Veena Pental after sale of defence colony property? OPP"

7. After framing of the issues, another application (IA No.15124/2015) was filed by the petitioner and respondents no.3 and 4 under Order XI Rules 12 and 13 of the CPC seeking production of documents, stating that the said documents are relevant in the light of issue no.3 framed by the Court. In respect of respondent no.1, discovery and production of the following documents was sought:

i. All Documents relating to bank deposits made by Mrs. Veena Paintal on 22.1.2007 and for a period of six months thereafter including without limitation bank statements, fixed deposit receipts, nomination forms, correspondence, account opening forms, FD forms etc. and all documents relating to changes, renewals etc. if any, made to the same."

In respect of respondent no.2, discovery and production of the following documents was sought:

"i. All Documents relating to bank deposits made by Mrs. Veena Paintal on 22.1.2007 and for a period of six months thereafter including without limitation bank statements, fixed deposit receipts, nomination forms, correspondence, account opening forms, FD forms etc. and all documents relating to changes, renewals etc. if any, made to the same."

8. Thereafter, an application (IA No.15125/2015) was filed on behalf of the petitioner and respondents no.3 and 4 under Order XI Rule 1 of the CPC seeking leave of the Court to administer interrogatories on respondents no.1 and 2. Details of the interrogatories were provided in paragraph 7 of the application and it was pleaded that the said interrogatories were very necessary to establish that the FDR had been illegally tampered with and overwritten, that the name of respondent no.1 was added later as a joint holder and that the nature of the account was changed.

9. All the aforesaid applications were contested by respondents no.1 and

2. It was stated by respondent no.1 that all papers in possession of respondent no.1 were handed over to the petitioner vide letter dated 19th April, 2010 and that the respondent no.1 did not have any further documents in her possession. The respondent no.2 bank, in its reply to the aforesaid applications, contended that by way of the aforesaid applications, the petitioner is collecting evidence and making fishing and roving enquiry. Hence, both the respondents sought dismissal of the aforesaid applications.

10. The learned Trial Court, vide impugned order dated 10th July, 2017 dismissed IA No.15125/2015 filed under Order XI Rule 1 of the CPC for leave to administer interrogatories, by holding that (i) the relief of rendition of accounts has to be proved through evidence and not by extracting evidence by way of interrogatories; (ii) the petitioner is seeking to collect evidence and information amounting to admission of the parties by way of interrogatories which is not permissible; (iii) the application under Order XI Rule 1 of the CPC has been filed after completion of pleadings and framing of issues; and, (iv) the parties cannot be asked to make admissions through interrogatories.

11. The two applications filed under Order XI Rules 12 and 13 of the CPC were dismissed vide impugned order dated 11th February, 2020 by the Trial Court, holding that (i) the present applications seek similar reliefs, as were sought in the applications filed under Order XI Rule 1 of the CPC and which stood dismissed on 10th July, 2017; (ii) all information/documents sought by the petitioner can be proved or established only by way of evidence or cross-examination and a fishing and roving enquiry cannot be made; and, (iii) the petitioner is seeking collection of evidence in the garb of Order XI Rules 12 and 13 of the CPC.

12. Interestingly, the learned Trial Court while dismissing applications under Order XI Rules 12 and 13 of the CPC for production of documents, proceeded as though both the said applications were filed seeking leave to administer interrogatories.

13. Learned counsel appearing on behalf of the petitioner has contended that the learned Trial Court while dismissing the aforesaid applications has proceeded on a completely erroneous basis. No

finding has been given whether the aforesaid interrogatories/documents are germane for deciding the suit. Further, various judgments cited before the learned Trial Court by the petitioner have not been discussed at all in the impugned orders.

Learned counsel relies upon the judgment of a Co-ordinate Bench of this Court in *Canara Bank Vs. Rajiv Tyagi & Association & Anr.* ILR (2010) III Delhi 270 and judgment of the Bombay High Court in *Narain Ramchandra Bakhle Vs. Govind Datta Bakhle* (2018) 5 Bom CR 836 to contend that the only test to be applied while deciding an application under Order XI Rule 1 of the CPC is the relevancy of the documents for deciding the suit. It is contended that the respondent no.1 has admitted in the written statement that she has in her possession the documents of late Mrs. Veena Paintal.

14. Per contra, counsel appearing on behalf of the respondent no.1 submits that the FDR in respect of which tampering is alleged is already on record. He further submits that in the statement given by the respondent no.1 before the Trial Court on 23rd December, 2019, it has already been stated that all papers pertaining to the subject matter of the suit have already been handed over to the petitioner vide letter dated 19th April, 2010 and there are no further documents in possession of the said respondent. The counsel appearing for the respondent no.2 bank submits that the present petition is highly belated and draws attention of the Court to the order dated 31st May, 2019 in CM(M) 925/2019 where at the time of issuing notice on the present petition it was stated that the notice would be without prejudice to the contentions of the respondent with regard to maintainability of the petition. He draws attention to the reply to IA No.15124/2015 on behalf of the respondent no.2 bank before the Trial Court wherein it is stated that in June, 2013 a fire broke out at the Vasant Vihar branch of the bank in which the documents in respect of which discovery was sought under the aforesaid application, were destroyed. He further submits that information was provided to the petitioner as far back in 2013 and the copy of the FDR, allegedly tampered with, was also provided to the petitioner and after that it is for the petitioner to prove allegation of tampering.

15. In rejoinder, the counsel for the petitioner submits that even if it is the case of the respondents that the documents have been destroyed or are not available, the same should be stated on oath so that the petitioner can take other steps as may be permissible in law.

16. Undoubtedly, there is a delay in filing CM(M) 925/2019, but keeping in mind the important questions of law involved in the present petitions, the present petitions cannot be held to be not maintainable on account of delay. In any event, remedy under Article 227 of the Constitution of India is a discretionary remedy and there is no prescribed period of limitation provided.

17. Coming to the merits of the petitions, this Court is of the view that the reasoning given by the Trial Court in both the aforesaid impugned orders under challenge in the present petitions are not tenable in law.

18. As regards the impugned order dated 10th July, 2017 dismissing the application for leave to administer interrogatories, the same proceeds on a complete misinterpretation of law. Rules 1 to 10 of Order XI of the CPC provide a complete code with regard to interrogatories. The said provisions

prescribe the entire procedure from the time an application seeking leave of the Court to deliver interrogatories is filed. The aforesaid provisions of the CPC with regard to interrogatories have been propounded by this Court in a series of judgments. In *Sharda Dhir Vs. Ashok Kumar Makhija and Ors.* MANU/DE/1021/2002, it was observed as under:

"10. As observed above at the preliminary stage of hearing on the application the court is required to decide whether the applicant should be allowed to interrogate the other side, but is not to determine what question should the opposite party be compelled to answer. Interrogatories may then be served on the other party for his answer to that on affidavit. The party, who has been served with Interrogatories, will then answer the Interrogatories on affidavit or raise objections about the relevancy or they being of scandalous nature, irrelevant, not bona fide, or not to be answered on the ground of privilege etc., in answer. The court then may consider and dispose of the Interrogatories. It will not for the court at this stage of granting leave to consider what particular questions the party interrogated should be compelled to answer. Proper time for considering that question is after the party interrogated has filed its affidavit in answer."

19. The counsel for the petitioner has correctly relied upon the judgment of this Court in *Canara Bank supra*, wherein, in a similar factual background, following observations were made by the Court:

"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. 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 present suit was filed for recovery and rendition of accounts, as was the case in *Canara Bank supra*. Therefore, the above quoted observations given in *Canara Bank supra* would be applicable in the present case as well.

20. Reference may also be made to a subsequent judgment of this Court in *Transport Corporation of India vs. Reserve Bank of India MANU/DE/2499/2017* wherein while following the dicta in *Sharda Dhir supra*, *A.K. Aggarwal Vs. Shanti Devi 1996 RLR 60* and *Canara Bank (supra)* it was observed as follows:

"20. The Court is not, at this stage, to examine as to what would be the impact of the answer of the interrogatories. The Court, at the stage of administration of interrogatories, has to only consider whether the answer to the interrogatories would have some bearings on the issues involved in the case and as to whether they relate to any matter in question to the suit. The law with regard to the interrogatories is well settled.

21. The provisions of Order XI of the CPC are intended to curtail evidence thereby expediting trial of suit, saving time of the Court and costs of litigation to the parties. They have to be liberally used and parties have to be encouraged to use them in the course of trial. One of the great objects of interrogatories when properly administered has always been to save evidence that is to diminish the burden of proof which was otherwise on the plaintiff. Their object is not merely to discover facts which will inform the plaintiff as to evidence to be obtained, but also to save the expense of proving a part on the case. Interrogatories are not limited to giving the plaintiff a knowledge on that which he does not already know but include the getting an admission of anything which he has to prove on any issue which is raised between him and the defendant. (Ref: *Attorney-General v. Gashill (1882) 20 Ch. 519*). Order XI gives a party a right to interrogate with a view to obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings. The object is to obtain an admission from the opponent which will make the burden of proof easier than it otherwise would have been. Interrogatories are admissible which go to support the applicant's case or to impeach or destroy the opponent's case. (Ref: *Plymouth Mutual Co-op. Society v. Traders Publishing Association (1906) 1 LJ 415*.)

22. Answers to the interrogatories would lead to reduction in the time taken by the court in recording cross examination and help in crystallizing the cross examination. 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. 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.

23. Administering of Interrogatories is to be encouraged as it is a means of obtaining admissions of parties and tends to shorten litigation. As a general rule the Interrogatory should be allowed, whether the answer to them would either strengthen the case of the party administering them or to destroy the case of the adversary. The court should not be hyper-technical at the stage of the service of the Interrogatories. This rule is to be used liberally whenever it could shorten the litigation and serve the interest of justice.

24. When the interrogatories proposed to be administered are examined in the light of the above referred legal propositions, it is clear that answer to the interrogatories may have the effect of shortening the litigation."

21. When examined in the light of parameters laid down in the aforesaid judgments, clearly, the Trial Court has misdirected itself in rejecting the application filed by the petitioner under Order XI Rule 1 of the CPC. While deciding the said application under Order XI Rule 1 of the CPC, the Trial Court had to only consider whether answer to the said interrogatories would have some bearing on the issues involved in the case and whether the same could be necessary for fair adjudication of the dispute. The very object of the interrogatories is to know the case of the opposite party and to, therefore, shorten the trial and limit the scope of the cross-examination. The Courts should be liberal and should not be hyper-technical in allowing the use of interrogatories in a suit. Interrogatories also enable a party to obtain an admission from the opponent, which reduces the scope of trial and the cost of litigation for the parties. Once the Court comes to the conclusion that the interrogatories are relevant for proper adjudication of the case, the interrogatories are served upon the other party and the said other party has to answer the interrogatories on affidavit or objections can be raised on the ground that the said interrogatories are scandalous in nature or are not relevant or not bona fide for the purposes of the suit or on the ground of privilege. The objections on the grounds above have to be taken on affidavit. It is at that stage that the Court has to consider which of the questions in the interrogatories the party should be compelled to answer.

22. In the present case, the approach followed by the Trial Court in dismissing the application filed by the petitioner was completely flawed. No exercise has been undertaken to determine whether the interrogatories sought to be delivered on the respondents are relevant or necessary for fair and proper adjudication of the case. This Court is of the view that the interrogatories sought to be served by the petitioner on respondents no.1 and 2 were germane for adjudication of the suit. Seeing the nature of relief sought in the suit viz. rendition of account with regard to the various fixed deposits made by late Mrs. Veena Paintal in the name of the petitioner, the information/documents sought by the petitioner with regard to such deposits were relevant for the issues to be decided in the suit. The information sought by way of interrogatories with regard to procedure to be followed by the bank for change in the nature of account or adding a nominee to the FDR is also very relevant in the light of the allegations in the plaint that the said fixed deposit was illegally tampered with and the name of respondent no. 1 was wrongly added.

23. The only basis provided by the Trial Court for not allowing the application of the petitioner was that the interrogatories could be put in cross-examination. The learned Trial Court failed to

appreciate that the cross-examination may not be necessary in light of the answers given to the interrogatories. It is not the case of the respondents that any of the interrogatories are scandalous in nature or are irrelevant. When the aforesaid tests of 'relevancy' and 'expediency' are applied to the facts of the case, there is no doubt in the mind of the Court that interrogatories as sought to be raised in the present case should have been allowed and would have helped in reducing the time taken in trial.

24. It is unfortunate that the adjudication of the said applications has taken so much time and delayed the adjudication of the suit for almost four years when such an application ought to have been allowed immediately. In fact, Order XI Rule 2 of the CPC provides that the Court will decide the said application within seven days of filing of the said application.

25. The impugned order dated 11th February, 2020 while dismissing the application under Order XI Rules 12 and 13 of the CPC for discovery and production of documents, is completely premised on the basis that the Trial Court was deciding applications under Order XI Rule 1 of the CPC for leave to administer interrogatories. In this regard reference may be made to the following paragraphs:

"6. It is needless to point out that the purpose of providing the procedure of discovery by interrogatories in the Code of Civil Procedure is to shorten the litigation or at least save the time and expenses connected therewith. It enables a party to obtain an admission from the opponent which renders his burden of proof a bit lighter. The second proviso to Rule 1 of Order XI uses the expression "matters in question", which expression has its own significance and importance. The expression "matters" means a question or issue in dispute or in action and not the thing about which such dispute arises. The object of the provision is to secure all material documents and to put an end to lengthy enquiry with regard to document/material in possession of the other party. There are however limits to the utilities 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 object of the interrogatories is to ascertain an adversary's case, yet they cannot be permitted to be used by a party, merely to obtain any disclosure beforehand of evidence supporting the adversary's case as this would give one party an unfair advantage over the other.

7. The Court can allow service of interrogatories, at any stage of the suit, for which it has been conferred wider discretion, but at the same time, the discretion must be exercised in a judicious way. The information sought to be furnished must have some nexus or relevancy with the dispute in question.

....

9. In the light of the pleadings, I observe that prayer asking for documents by such interrogatories deserve to be disallowed since all questions relating to the FDRs/changes and alterations/alleged removal of documents by Defendants No. 1

including other documents based on which plaintiff has confined her case are the questions which can be proved or established only by way of evidence or cross-examination. Under the cloak of the provisions of Order XI, Plaintiffs cannot be permitted to have roving or fishing inquiries in respect of matters which are not germane for the proceedings and delivery of interrogatories cannot be a substitute for leading evidence by the Plaintiffs. This is why Rule 1 of Order XI has been stringed with a proviso to the effect that the questions which may be relevant for cross-examining the witness may not be covered through interrogatories.

10. Pertinently, the issues were framed by Hon'ble Delhi High Court on 27.05.2015 and since then not a single witness has been examined by the Plaintiffs as per list of witnesses. The applications infact seek the collection of evidence in the garb of Order XI which amounts to a roving inquiry into the issues, which are to be proved by the Plaintiffs through evidence. In such a situation the applications filed by the Plaintiffs serving of interrogatories and seeking answers thereof would rather protract the proceedings in a matter which pertains to the year 2013."

26. Reference to the paragraphs above shows that the entire discussion in the said impugned order is with regard to the scope of interrogatories. There is no discussion on the provisions in the CPC with regard to the discovery and production of documents. In fact, the learned Trial Court has also referred to provisions of Order XI Rule 1 of the CPC in reaching its conclusion, completely overlooking the fact that the two applications being decided by the said impugned order were actually applications under Order XI Rules 12 and 13 of the CPC for discovery and production of documents.

This shows the complete non-application of mind by the Trial Court, and the said order deserves to be set aside on the said ground alone.

27. A Division Bench of this Court in M. Sivasamy Vs. M/s Vestergaard Frandsen A/S and Ors. 2009 (113) DRJ 820 relying upon the judgment of the Supreme Court in M.L. Sethi Vs. R.P. Kapur (1972) 2 SCC 427, while construing the scope of Order XI Rule 12, has observed as under:

"(i) The documents sought to be discovered and produced have to be relevant to the matter in controversy viz matters in question.

(ii) The documents have to be in the possession and power of the person against whom discovery and production is sought.

(iii) Discovery and production of the documents which are sought for are necessary at that stage of the suit;

(iv) The discovery and production is necessary for fairly disposing of the suit or for saving costs.

(v) The discovery and production may be general or limited to certain classes of documents as the Court in its discretion deems fit and the production will only be ordered if the Court considers it just."

28. Applying the aforesaid parameters to the present case, in the considered view of this Court, the discovery and production of documents sought in the aforesaid applications are relevant in the context of the suit and for adjudication of the suit. Even if the defence of the respondents of not having the documents in their possession and/or destruction of the documents is taken into account, the same would have to be stated by them on oath in terms of Order XI Rule 13 of the CPC and thereafter, it is for the petitioner to take any such further steps as may be available to her in law.

29. In view of the above, both the present petitions are allowed and the impugned orders dated 10th July, 2017 and 11th February, 2020 are set aside. The respondents no.1 and 2 are directed to answer the interrogatories by filing an affidavit in terms of Order XI Rules 8 and 9 of the CPC within four weeks from today. Similarly, the respondents no.1 and 2 will file an affidavit in terms of Order XI Rule 13 of the CPC in respect of documents sought to be produced in IA No.6763/2013 and IA No.15124/2015, within four weeks from today. Thereafter, the Trial Court would proceed with the matter in light of observations made above.

AMIT BANSAL, J.

SEPTEMBER 10, 2021 ak/Sakshi.R