

# Dr. Deepak Kothari vs Omnism Technologies Pvt. Ltd on 3 January, 2023

**Author: Vaibhavi D. Nanavati**

**Bench: Vaibhavi D. Nanavati**

NEUTRA

C/SCA/12363/2018

ORDER DATED: 03/01/2023

undef

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12363 of 2018

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DR. DEEPAK KOTHARI

Versus

OMNILSM TECHNOLOGIES PVT. LTD.

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Appearance:

MR. JAIMIN R DAVE(7022) for the Petitioner(s) No. 1

MR. TIRTHRAJ PANDYA(6685) for the Petitioner(s) No. 1

NANAVATI ASSOCIATES(1375) for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 03/01/2023

ORAL ORDER

1. By way of present petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 29.06.2018 passed by the learned Chamber Judge, City Civil Court, Ahmedabad, below Exh.22 in Special Civil Suit No.2752 of 2015, whereby an application filed by the respondent herein - original plaintiff under Order XI Rule 1 of the Code of Civil Procedure, 1908 has been allowed.

2. The brief facts leading to the filing of the present petition reads thus:

2.1 The respondent - original plaintiff has filed Civil Suit No.2752 of 2015 for damages, permanent injunction and declaration. The respondent is a company incorporated under the provisions of Companies Act, 1956. The petitioner herein -

original defendant was an employee of the respondent company. It is the case of the respondent herein that it is a NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined developer of software and various applications which are used in medical field by Medical Professional and Doctors and are also useful for creating Electronic Medical Record (for short 'EMR') of a particular person.

2.2 The petitioner was employed with the respondent company vide employment agreement dated 02.04.2012. It is the case of the respondent company that one Mr. Mayur Choudhari was also employed in the said year. Mr. Mayur Choudhari was allegedly working under the guidance of defendant's syndicate of experts and had confidential information/trade secrets of respondent company. The respondent company preferred a Civil Suit No.331 of 2015 before the concerned Civil Court against the said Mr. Mayur Choudhari, which is pending adjudication. The petitioner was dissatisfied with the work environment at the respondent company and for various reasons, on 14.11.2014, decided to resign from the respondent company. The said decision was conveyed to the respondent company through E-mail. The said resignation came to be accepted by the respondent company on 17.11.2017 and the petitioner came to be relieved as on 12.02.2015.

2.3 The respondent company looked at the recruitment of petitioner in InSync Healthcare Solution, Vadodara with an eye of suspicion and consequently, issued a legal notice dated 17.07.2015 to the petitioner. The petitioner justified his stand by filing reply dated 01.08.2015. The respondent company proceeded to file a suit for declaration to the effect that the respondent is the owner of the trade secrets for software Omni NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined MDEHR, permanent injunction against the petitioner from breaching terms and conditions of Employment Agreement dated 02.04.212 and damages to the tune of Rs.5,00,000/- for breaching terms and conditions of employment agreement and infringing so called copy right of the respondent. The respondent company also filed an application below Exh.5 seeking temporary injunction to which, written statement came to be filed by the petitioner. The respondent company thereafter, filed an application below Exh.22 seeking leave to file interrogatories to the petitioner under Order XI Rule 1 of the Code of Civil Procedure, 1908. The petitioner filed a reply to the application and objected to the said application filed below Exh.22 on the ground that the interrogatories are filed at a premature stage and such interrogatories were irrelevant for the purpose of deciding notice of motion. It was also contended that the respondent company preferred such application based on conjectures and surmises. The learned Chamber Judge, Civil Court, has allowed the said application below Exh.22 and permit the respondent to deliver the list of interrogatories to the petitioner.

2.4 Being aggrieved by the said impugned order passed below Exh.22, the petitioner herein has approached this Court seeking following reliefs:

"(a) Quash and set aside the order dated 29 th June, 2018 passed by Learned Chamber Judge, City Civil Court, Ahmedabad below Exhibit - 22 in Special Civil Suit No.2752 of 2015 pending before Civil Court, Ahmedabad at ANNEXURE - A;

(b) Pending the hearing and final disposal of the present petition, this Hon'ble Court may be pleased to stay implementation and operation of order dated 29 th June 2018 NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined passed by Learned Chamber Judge, City Civil Court, Ahmedabad below Exhibit - 22 in Special Civil Suit No.2752 of 2018 at Annexure - A and direct Chamber Judge, Civil Court, Ahmedabad to proceed with the Special Civil Suit No.2752 of 2015 without interrogatories;

(c) any other and further relief deemed just and proper be granted in the interest of justice;

(d) to provide for the cost of this appeal."

3. Heard Mr. Jaimin Dave, the learned advocate appearing for the petitioner and Mr. Laukik Pant, the learned advocate for Nanavati Associates appearing for the respondent company.

4. Mr. Jaimin Dave, the learned advocate appearing for the petitioner, vehemently submitted that the order impugned is required to be quashed and set aside on the ground that the application for leave to deliver interrogatories was filed with sole intention of making a fishing and roving inquiry and relied on the first two interrogatories for the same. Mr. Dave, the learned advocate further submitted that the impugned application results in roving inquiry which is not permissible under the provisions of Order XI Rule 1 of the Code. Mr. Dave, the learned advocate submitted that the Court below has failed to take into consideration the provisions contained in Order XI Rule 6. Mr. Dave, the learned advocate also submitted that all the interrogatories are also irrelevant for the purpose of adjudicating the controversy involved in the present Suit at the stage of notice of motion. Mr. Dave, the learned advocate, lastly submitted that the application-in-question below Order XI Rule 1 is preferred at a premature stage.

5. Mr. Laukik Pant, the learned advocate for Nanavati NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined Associates appearing for the respondent - company, placed reliance on Order XI Rule 6 of the Code, and submitted that it provides for objections to interrogatories may be taken in affidavit by answer. Mr. Pant, the learned advocate, further relied on Order XI Rule 8 of the Code and submitted that it is mandatory to answer the interrogatories. Mr. Pant, the learned advocate, further relied on Section 30 of the Code of Civil Procedure, and submitted that deliveries of interrogatories can be at anytime. Mr. Pant, the learned advocate, also submitted that the order passed below Exh.22 by the Court below allowing the application filed by the respondent herein is just and proper and requires no interference. Mr. Pant, the learned advocate, further submitted that the interrogatories should be encourage by a Court and the same should be used liberally. The present petition is filed with an ulterior motive to delay the proceedings of the suit. Mr. Pant, the learned advocate, submitted that the petitioner's intention is

not to disclose the facts relevant to the matters-in-dispute and that is why the petitioner is resisting interrogatories instead of providing relevant facts to the matters-in-dispute. Mr. Pant, submitted that the order impugned has rightly been passed by the concerned Court and the same was necessitated because the petitioner in his written statement had generally denied all the allegations and had not given any specific answers to the averments in the plaint thereby not sufficiently disclosing the nature of its case in its pleadings. Mr. Pant, submitted that the application below Exh.22 has been filed by the respondent herein not with an intention of making a fishing and roving inquiry but, to obtain from the writ applicant everything which NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined is material and relevant to the issues raised in the pleading. Placing reliance on the aforesaid submissions, Mr. Pant, the learned advocate appearing for the respondent - company, submitted that the petition may not be entertained and the same be dismissed.

Analysis:

6. Section 30 of the Civil Procedure Code, 1908, reads thus:

"30. Power to order discovery and the like.- Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,-

(a) make such Orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) Order any fact to be proved by affidavit."

6.1 The facts being undisputed are not repeated. At this stage, it is apposite to refer to Order XI :

"1. Discovery by interrogatories.- 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.

2. Particular interrogatories to be submitted.- On an application NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court 1[and that court shall decide within seven days from the day of filing of the said application]. 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 admissions, 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.

3. Costs of interrogatories.- In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the cost occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

4. Form of interrogatories.- Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

5. Corporations.- Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an Order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an Order may be made accordingly.

6. Objections to interrogatories by answer.- Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, 2[or on the ground of privilege or any other ground], may be taken in the affidavit in answer.

7. Setting aside and striking out interrogatories.- 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 days after service of the interrogatories.

8. Affidavit in answer, filing.- Interrogatories shall be answered by affidavit to be filed within ten days or within such other time as the Court may allow.

9. Form of affidavit in answer.- An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

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10. No exception to be taken.- No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

11. Order to answer or answer further.- Where any person interrogated omits to answer, or answer insufficiently, the party interrogating may apply to the Court for an Order requiring him to answer, or to answer further, as the case may be. And an Order may be made requiring him to answer or answer further, either by affidavit or by viva voce examination, as the Court may direct.

12. Application for discovery of documents.- Any party may, without filing any affidavit, apply to the Court for an Order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such Order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit:

Provided that discovery shall not be Ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13. Affidavit of documents.- The affidavit to be made by a party against whom such Order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

14. Production of documents.- It shall be lawful for the Court, at any time during the pendency of any suit, to Order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

15. Inspection of documents referred to in pleadings or affidavits.- Every party to a suit shall be entitled 1[at or before the settlement of issues] to give notice to any other party, in whose pleadings or affidavits reference is made to any document 2[or who has entered any document in any list annexed to his pleadings] or produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined he being a defendant to the suit, or that he had some other cause or excuse with the Court shall deem sufficient

for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs as otherwise as the Court shall think fit.

16. Notice to produce.- Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

17. Time for inspection when notice given.- The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

18. Order for inspection.- (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an Order for inspection in such place and in such manner as it may think fit:

Provided that the Order shall not be made when and so far as the Court shall be of opinion that, it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such Order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

19. Verified copies.- (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of Ordering inspection of the original books, Order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations:

Provided that, notwithstanding that such copy has been NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined supplied, the Court may Order inspection of the book from which the copy was made.

(2) Where on an application for an Order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege 1[unless the document relates to matters of State.] (3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been Ordered or made, make an Order requiring any other party to state by affidavit whether anyone or more specific documents, to be specified in the application, is or are, or has or have at an time been, in his possession or power, and, if not then in his possession when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time and, in his possession or power the document or documents specified in the application, and that they relate to the matters in questions in the suit, or to some of them.

20. Premature discovery.- Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, Order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

21. Non-compliance with Order for discovery.- 1[(1)] Where any party fails to comply with any Order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an Order to that effect and 2[an Order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.] [(2) Where an Order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]

22. Using answers to interrogatories at trial.- Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined answer :

Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last- mentioned answers ought not to be used without them, it may direct them to be put in.

23. Order to apply to minors.- This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of the persons under disability."



7. The respondent herein has preferred Civil Suit No.2752 of 2015 for breach of terms and conditions of the employment agreement dated 02.04.2012. The respondent company also filed an application below Exh.5 seeking temporary injunction. The petitioner thereafter, filed written statement and reply to the said application below Exh.5. On 25.10.2016, the respondent company filed an application below Exh.22 seeking leave to deliver interrogatories to the defendant/petitioner herein under Order XI Rule 1 of the Code of Civil Procedure. The petitioner herein filed objections to the said application below Exh.22 dated 09.11.2016 to the application for leave to deliver interrogatories. Objections to the said application filed by the petitioner below Exh.26 on 09.11.2016. The relevant paragraphs of the said objections dated 09.11.2016 filed by the petitioner reads thus:

"2. The defendant submits that the plaintiff has filed present application at the stage of notice of motion. Such interrogatories are immaterial to decided notice of motion. The plaintiff had malafidely prefer this application to take undue advantage of legal process and to create illusory evidence against the defendant. The plaintiff has not submitted any reason, cause or particular to file present application. Therefore the present application itself is not maintainable at law. The defendant further submits that the interrogatories filed by the plaintiff is vague and with sole intention to harass the defendant. Such interrogatories are abuse of process of law.

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3. The defendant submits that the plaintiff has filed on fishing expedition or embark on a roving inquiry in the grab of interrogatories. The plaintiff ask questions in interrogatories which have neither any relevance nor nexus with issue of the present proceedings. Therefore the present application is not allowed and the same be deserves to be dismissed with cost.

4. The defendant has already disclosed all necessary pleadings in their written

statement cum reply to the injunction application filed 5.1.20016. The on interrogatories filed by the plaintiff is repetitive in nature and hence the Hon'ble court need not allow the application of the plaintiff under order XI rule 1 of Code of Civil Procedure.

5. Except the statements, averments and contentions, specifically accepted to be true and correct, the rest of the statements, averments and contentions made or raised in the application are not true and hence denied as if the same are set- out specifically and traversed seriatim.

6. The contents of para 1 and 2 are irrelevant and the same are not admitted. The suit is deserves to be dismissed with cost.

7. The contents of para 3 of the application is vague and the application cannot entertain with the reason mentioned therein. It is not true that the plaintiff has prima facie reason to believe that the defendant has malafidely not sufficiently disclosed fact in his pleading which are relevant to the matter of dispute. In fact, the application is silent on alleged undisclosed facts in pleading.

8. The contents of para 4 of the application are not true and hence denied. It is not true that the interrogatories submitted by the plaintiff was relevant to the matter of dispute. In fact, the interrogatories submitted by the plaintiff are vague, abuse of process of law, fishy, irrelevant and to make out some case of plaintiff. Therefore the application filed by the plaintiff under order XI Rule 1 of Code of Civil Procedure deserves to be dismissed with cost.

8. The Court below while passing the impugned order below Exh.22 considered the contentions raised by the respective parties and passed the following order:

"4. Heard learned advocates for both the sides and having gone through the citations relied upon both the sides and in the Code of Civil Procedure, Legislator has in Order XI Rule 1 stated that in any suit the plaintiff or defendant by leave of the Court interrogatories in writing for the examination of the may deliver 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 NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without any 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. Further, this court is also totally relying upon the ratio decided by Hon'ble Bombay High Court, in the case of Sonia Senroy Vs. Amit Senroy reported in AIR 1998 Bombay 302, "wherein plaintiff has filed application for interrogatories and inspection of documents with respect to financial status of

defendant, such inspection and interrogatories was extremely relevant to decide quantum of maintenance."

In para 16 of the above cited judgment, Hon'ble Bombay High Court has further held as under:

"16. Therefore, it is also a settled legal position that as a general rule, interrogatories are to be allowed, whenever the answer to them will serve either to maintain the case of the party administering them or in destroy the case of the adversary. The power to serve interrogatories is not meant to be confined within narrow technical limits. It should be used liberally, whenever it can shorten litigation and serve the interest of justice."

5. Considering the facts of the case and considering the arguments advanced by both the sides and relying upon the provisions and ratio decided by the Hon'ble High Courts, the object of delivering interrogatories is seeking information from the other side about certain facts which are to be proved in the case. Interrogatories can be for discovery of documents as well as for discovery of facts. Further, it is also required to be taken into consideration that the interrogatories cannot be allowed to be delivered in case that they are in the nature of making fishing inquiries from other side. Interrogatories must be confined to facts which are relevant to the matters in question in the suit.

6. In the present case, the interrogatories seek by the plaintiff side are within the subject matter of the suit, hence, this court is of the view that it is in the fitness of thing allow the present interrogatories deliver to the defendant for obtaining discovery of facts relevant to the matter in dispute. Hence, I pass following order:

ORDER The present application Exhibit 22 is hereby allowed.

Plaintiff is permitted to deliver to the defendant the interrogatories attached along with the present application and defendant is also directed to answer the interrogatories within one month from the date of this order."

9. At this stage, it is apposite to refer to the ratio laid down by the Orissa High Court in the case of Utkal Miling Industries Vs. Anand Kumar Chhaganlal, in Civil Revision Application No.214 of 1984, wherein it has been observed as under:

"3. Reading the entire Order 11, it cannot be said that availability of answer in the written statement would be a ground to refuse leave for service of the interrogatories. In Mahesh Prasad Bharat v. Messers. Rao and Sons and Ors. (1964) 6 OJD 53, this Court held that the answer in the written statement would not justify the refusal. It was observed:

The second reason given by the learned Munsif that the answers to the interrogatories could be found from the written statement of the contesting defendants is besides the point. In the written statement there was a bald and categorical denial. The plaintiff purports to establish further admissions or denials from defendants 1 to 5 as to if the specific particulars given in the interrogatories are true or not. If defendants 1 to 5 give admissions, the plaintiff would not be called upon to establish the same evidence. If the defendants deny, the plaintiff will try to make out such a case either through his own evidence or by cross examination. In any view of the matter, the reason given by the learned Munsif that the answers are to be found in the written statement is unsound."

9.1 The Orissa High Court in the case of Bhakta Charan Mallik Vs. Nataorar Mallik & Ors. reported in AIR 1991 Orissa 319, observed as under:

"Obviously the purpose of this rule is to enable a party to require information from his opponent for the purpose of maintaining his own case or for destroying the case of the adversary. The main object of interrogatories is to save expenses and shorten the litigation by enabling a party to obtain from his opponent information as to the facts material regarding the question in dispute between them or to obtain admission of any facts which he has to prove on any issue which is raised between them. As a general rule, interrogatories are to be allowed whenever the answer to them will serve either to maintain the case of the party administering them or to destroy the case of the adversary. The power to serve interrogatories as it appears is not meant to be confined within narrow technical limits. It should be used liberally whenever it can shorten litigation and serve the interest of justice. However, this can be exercised within certain limits. The power to order interrogatories to be served and answered should be used with considerable care and caution, so that it is not abused by any party. A party entitled to interrogate his opponent with a view to ascertain what case he has to meet and the facts relied on and to limit the generality of the NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined pleadings and find out what is really in issue See AIR 1934 Nagpur 181 Shamrao v. Motiram.

At the same time interrogatories must be confined to facts which are relevant to the matters in question in the suit. Interrogatories which are really in nature of cross-examination will not be allowed see AIR 1972 SC 1302 Raj Narain v. Smt. Tndira Nehru Gandhi."

9.2 The Delhi High Court in the case of Sharda Dhir Vs. Ashok Kumar Makhija & Others, reported in 2002 (64) DRJ 713, has observed as under:

"The application was filed by the plaintiff under Order 11 Rule 1 CPC. This rule allowed the court to grant leave to any of the party of the suit to deliver Interrogatories in writing for examination of the opposite party relating to any matter in question in the suit. The object of this rule is that a party knows the nature of his opponent's case before hand in order to meet it at the hearing. Indeed, he is not entitled to know the fact which constitute evidence to prove the opponent's case. The nature of the case of the parties is disclosed in their respective pleadings but in a given case the pleadings may not sufficiently disclose the nature of the parties' case. In order to make good deficiency this rule has been enacted. It is now well settled that 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."

9.3 The Rajasthan High Court in the case of Devi Dutt Khetan Vs. Smt. Sita Devi Khetan & Ors., reported in 2020 (2)RLW 1458, has observed as under:

"7. The object of the interrogatories has succinctly been laid down in case of Ramlalsao (supra) wherein it was held as under:

10. The learned Judge erroneously refused leave on the ground that the interrogatories were not material at that stage of the suit, meaning probably, before the oral evidence was recorded. The application for discovery of documents was also disposed of on the same ground. We are of the view that these orders are erroneous. The right of a party to deliver interrogatories to his opponent and get answers from him is a valuable one in conducting his cause and he should not lightly be deprived of it. It must be remembered that discovery of facts and documents often tends to shorten litigation and save expenses. The learned Judge had not framed all the issues arising from the pleadings of the parties. If he had framed these issues and permitted the NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined parties to make full use of Orders 11 and 12, Civil Procedure Code, the trial would have been shortened and he would have found ample material to decide the case correctly. Probably, the preliminary decree could have been passed even without going into oral evidence."

8. In case of A. Shanmugam (supra), it was held as under:

42. In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges. Section 30 CPC reads as under:

30. Power to order discovery and the like. Subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party.

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;"

9. In case of M/s Hira Lal Dhanpat Rai (supra), it was held as under:

"6. So long as the interrogatories sought to be served, are relating to and relevant to matters in question having reasonable close connection, the same may be permitted and the mere fact that those facts can be proved by other evidence is no ground for refusing the permission to serve interrogatories. In this connection reference may be made to *Jamaitral Bishansarup vs. Rai Bahadur Motilal Chamaria* (1) wherein it has been observed as under:-

"Interrogatories cannot be disallowed merely on the ground that the party interrogating has other means of proving the facts in question since one legitimate purpose or interrogatories is to obtain admission."

9.4 The Delhi High Court in the case of *Rattan Mehta and Ors. Vs. Gayatri Shah & Ors.*, in CM (M) No.1738 of 2019, has observed as under:

"10. In judgment passed by hon'ble Delhi High Court in *A.K Aggarwal Vs. Shanti Devi*, 1996 RLR 60:1997 (1) RCR 22 it was observed that:

"Order XI of the CPC, contains salutary provision which are intended to curtail evidence thereby expediting trial of suit and as such their provisions are very useful. They have to be liberally used and parties have to be encouraged to use them in the course of trial. The provision of Order XI, Civil Procedure Code do not deserve a technical or truncated approach. Ultimately the use of these provisions saves time of the Court and costs of litigation to the parties".

NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined "Jessel M.R. in *Attorney-General vs. Gashill* (1882) 20 Ch. o. 519, said:

"Now, 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.

Cotton L.T., J, said: 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."

"In judgment Suresh Chand Vs. K.M Vinay Devi (decided on 14.09.1973) it was observed as:

"A party has 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. The purpose is to get from the Defendant an admission of that which no doubt he denied by his defense but not on oath. About the fact of the parentage of the appellant Suresh Chand a fact which is within the knowledge and an admission of it by him must obviously save enormous amount of expense at the trial."

10. Considering the facts of the present case and the position of law, following emerge:

10.1 Section 30 enables the Court to make orders relating to the delivery and answering of interrogatories, admission of facts and documents, discovery, inspection, production, impounding and return of documents. It also empowers the Court to issue summons to witnesses to give evidence or to produce documents or order, any fact to be proved by affidavit. Under Section 32, the Court has also power to compel the attendance of any person to whom a summons has been issued under this section. There is no specific provision in the Code to compel a person to produce a document, inherent powers under Section 151 of the Code can be exercised by the NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined Court for the ends of justice or to prevent the abuse of process of Court. The Court may exercise power at "at any stage" i.e. at any time during the pendency of the suit before the decree is passed or even in the execution proceedings.

10.2 The power to allow interrogatories is always at the discretion of the Court. Such discretion extends to allowing or refusing particular interrogatories. A Court of appeal or revision will not lightly interfere with exercise of discretion by the trial Court unless the Court has acted on a wrong principle of law.

10.3 Interrogatories may be administered by any party to a suit to his adversary. They may relate to any matter in issue in the suit.

11. Considering Section 30 of the Code, the contention raised by the petitioner that the application below Exh.22 is not maintainable and is pre-mature, the said contention is not acceptable to this Court. The court below considered the reply filed by the petitioner herein and held that the object of delivering interrogatories is seeking information from the other side about certain facts which are to be proved in the case.

Interrogatories can be for discovery of documents as well as facts. Taking into consideration the aforesaid, the concerned Court held that while it is not permissible for making fishing inquiries from the other side, the interrogatories must be confined to the facts which are relevant to the matters-in-question of the suit. The concerned Court, in the application below Exh.22, thought it fit to allow the interrogatories delivered to the petitioner for discovery of facts relevant and NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined germane for the dispute-in-question.

12. At this stage, it is apposite to refer to the ratio laid down by the Hon'ble Supreme Court in the case of M/s. Garment Craft Vs. Prakash Chand Goel, reported in AIR 2022 SC 422, wherein it is observed as under:

"18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. has observed:-

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the



orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of NEUTRAL CITATION C/SCA/12363/2018 ORDER DATED: 03/01/2023 undefined that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

13. This Court has gone through the application below Exh.22, as referred above, and the questions framed under Order XI Rule 4. This Court has also gone through the objections raised by the petitioner below Exh.26 herein wherein, the petitioner has stated that all the necessary information is disclosed in the written statement cum reply filed to the injunction application on 05.01.2016 as also that, the interrogatories filed by the respondent being repeatative in nature, the same may not be allowed. The petitioner has further contended that the application below Exh.22 is filed at the stage of notice of motion and the same is pre matured. The Court below has considered the objections raised by the petitioner and thereby allowed the application below Exh.22 and held that the object of delivering interrogatories is seeking information from the other side about certain facts which are to be proved in the case. Interrogatories can be for discovery of documents as well as of facts and the interrogatories sought by the respondent are within the subject matter of the Suit.

13.1 In the facts of present case, in view of this Court, the following emerge:

(a) The reply in written statement would not be a ground to refuse the interrogatories to the petitioner and filing of written statement would not absolve the petitioner from answering the interrogatories.

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(b) the answering to the interrogatories can be prayed by the any party at any stage i.e. at any time pending the suit proceedings before the decree is passed and even in the executing proceedings. In the facts of the present case, the Suit being at the stage of notice of motion would not render the application, preferred by the respondent below Order XI, pre-mature as discussed above.

14. For the aforesaid reasons, no interference is required to be called for under Article 227 of the Constitution of India in the order dated 29.06.2018 passed below Exh.22 by the Court below in the Special Civil Suit No.2752 of 2015.

15. In view of above, the present petition stands dismissed. Notice discharged. Interim relief, if any, stands vacated.

(VAIBHAVI D. NANAVATI,J) NEHA