IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16929 of 2012

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1. M/S Ram Pravesh Rai Estate (P) Ltd. A Company Registered Under Companies Act, 1956 Having Registered At Gohaua House, Sri Nagar, Siwan District -Siwan At Present 44, Patliputa Colony, P.S. Patliputra, Town And District - Patna Through Its Managing Director Shri Ram Pravesh Rai Son Of Shri Kamla Rai By Profession Class - I Government Contractor.

.... Plaintiff/Petitioner

Versus

1. Sri Rajesh Kumar Singh @ Munna Son Of Late Paras Nath Singh Resident Of 16A, Bandel Road, Kolkata Permanent Address - Baniya, P.O. - Chakaram, P.S. - Sariya, District - Muzaffarpur.
2. The State Bank Of India, A.D.B. Branch, Sariya, Rewa Road Saraiya, P.O. - Saraiya, District, District - Muzaffarpur Through Its Branch Manager.

.... Defendants/Respondent/s

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Appearance :
For the Petitioner : Mr. Binod Kumar Singh, Advocate
For the Respondent No.1 : Mr. R. K. Agrawal, Advocate
Mr. Shive Kumar, Advocate
For the Respondent No.2 : Mr. Alok Kumar Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C A V O R D E R

6 12-01-2016 Petitioner has challenged order dated 13.07.2012 passed by Sub-Judge, VII- Muzaffarpur in Money Suit No. 16 of 2010 whereby and whereunder rejected the prayer of the petitioner made under Order-XI Rule 1 & 2 of the C.P.C.

2. In order to properly adjudicate upon the dispute, a brief fact of the case has to be stated.

Respondent/Defendant No.1 Rajesh Kumar Singh @ Munna is said to have opened a bank account under Respondent No.2, State Bank of India, A.D.B. Branch, Saraiya in the name of

plaintiff in collusive manner and managed to siphon huge amount appertaining to Rs. 8,18,62,394/- whereupon Money Suit No. 16/2010 has been filed. On being noticed, both the Respondents/defendants appeared. Because of the fact that Respondent/defendant no.1, Rajesh Kumar Singh @ Munna failed to file WS within the stipulated time, therefore, he has been debarred. However, Respondent/defendant No.2, State Bank of India, A.D.B. Branch, Saraiya has filed WS controverting the allegation (Annexure-3). Subsequently thereof, petitioner/plaintiff filed petition under Order-XI Rule 1 & 2 (Annexure-5) along with questionnaire in terms of Appendix –'C' whereupon an objection has been raised by the Respondent/Defendant and after hearing the parties, by the order impugned the learned lower court had rejected the prayer made on behalf of petitioner/plaintiff, hence this petition.

3. It has been submitted on behalf of learned counsel for the petitioner that from perusal of the order impugned, it is evident that learned lower court had ignored the basic principle of law relating to interrogatories and that happens to be reason behind that several severe loopholes are found. The first and foremost argument on this score happens to be with regard to application of interrogatories which, as per submission, has been

provided for early disposal of the suit, side by side, to slip from adopting cumbersome procedure. Any sort of admission or disclosure furnished by adversary on interrogatories is to be taken into account while adjudicating upon the matter and on account thereof, there happens to be relevancy of interrogatory in each and every case. So far this particular case is concerned, that has got much more importance because of the fact that the Respondent/Defendant No.1 posed himself to be Managing Director of firm, M/s Ram Pravesh Rai Estate (P) Ltd and further succeeded in opening account in the name of aforesaid firm duly represented by him in collusion with the bank officials and on that very score got a huge amount deposited as well as siphoned therefrom. Therefore, the questionnaire so put forward, in case allowed, would have revealed an actual affair and on account thereof, would have shortened the cumbersome procedural law, whereunder the petitioner is found relinquished to call for each and every document having in possession of Respondent/Defendant No.2, State Bank of India, A.D.B. Branch, Saraiya, for an exhibit of the record.

4. It has also been submitted that Hon’ble Apex Court have taken note of the aforesaid provision of law and held that Subordinate courts should follow such procedure whenever so

prayed for to cut short the time expected in consuming while arriving at finality of the litigation. It has also been submitted that principle has been framed by the Hon'ble Apex Court and in likewise manner criteria has been laid down for exercising the eventualities of the interrogatory. The facts of the present case fully fit in, hence the order impugned does not justify its relevance.

5. It has further been submitted that learned lower court had blatantly refused against Respondent/Defendant No.1 on the ground that he has not filed WS though proceeding against him has been allowed to sail under Rule-VIII Rule 10 C.P.C. That means to say, even in absence of his WS, the Respondent/Defendant No.1 has got active involvement during trial. Learned counsel for the petitioner also relied upon ***AIR 2012 SC 2010 (Shanmugam v. Ariya Kshtriay Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam), AIR 2000 Kerala 24 (P. Balan v. Central Bank of India, Calicut), AIR 1960 Calcutta 536 (Jamaitrai Bishansarup v. Rai Bahdur Motilal Chamaria), (1972) 3 SCC 850 (Raj Narain v. Smt. Indira Nehru Gandhi).***

6. On the other hand, learned counsels representing the respective Respondents/defendant had consistently and conjointly

supported the order impugned. Furthermore, it has been submitted on behalf of learned counsels for Respondent/Defendant no.1 that the learned lower court had rightly considered and opined that on account of absence of WS on his behalf does not attract him to be served with an interrogatory. Furthermore, it has been submitted that from the questionnaire so placed, it is apparent that petitioner/plaintiff had tried to collect the evidence of which he happens to be deficient one. Apart from this, it has also been submitted that obligation lies upon plaintiff to prove its case and the purpose of interrogatory is not for collecting evidence nor it can be a replica of the plaint rather it happens to be a provision made available to cut short the matter by way of an answer at the end of the adversary over the lis. From the questionnaire, it is apparent that it happens to be nothing than a brief fact of the plaint so formulated in the form of question and on account thereof, have rightly been rejected by the learned lower court.

7. Learned counsel representing Respondent/Defendant No.2 has raised so many legal as well as factual grounds in order to dismantle and demolish the castle built by the petitioner. The first and foremost argument happens to be with regard to maintainability of the instant petition and for that it has been submitted that the aforesaid issue would not be entertainable under

Article 227 of the Constitution of India because of the fact that allowing or rejecting the prayer for interrogatory would not come under the process of superintendence by the High Court in the background of the fact that the same happens to be within the exclusive domain of the learned lower court. Furthermore, it has been submitted that adjudication of interrogatory, in case, so refused at an elementary stage is to be adjudicated upon by the appellate court. Therefore, the present petition is not maintainable.

8. It has also been submitted that WS has already been filed on his behalf which happens to be Anneuxre-3 of the main petition and from perusal of the same, it is evident that on each and every aspect as divulged in the plaint, there happens to be proper reply. So far documents are concerned, the relevant documents which happen to be under the custody of bank in case so directed by the learned lower court even at the prayer of the petitioner would be made available. Apart from this, it has also been submitted that petitioner had filed plaint with a pre-requisite mind and the questionnaire so furnished speaks in same manner which, if allowed, would incriminate the Respondent/Defendant no.2 and that being so, is found completely barricaded under Order XI of the C.P.C. So submitted that petitioner has got no case and that being so, the order impugned is fit to be affirmed.

9. Also relied upon ***AIR 1920 Sind 1 (Yusifally Alibhoy Karimji & Co. v. Haji Mahomed Haji Abdullah), AIR 1970 Mysore 254 (In re B.V. Padmanabha Rao (Somnath Iyer C.J.), (2003) 6 SCC 765 (Islamic Academy of Education v. State of Karnataka), (2015) 1 SCC 379 (Himalayan Coop. Group Housing Society v. Balwan Singh).***

10. ***AIR 1920 Sind 1 (Yusifally Alibhoy Karimji & Co. v. Haji Mahomed Haji Abdullah)*** has been relied upon by the learned counsel for the Respondent/Defendant No.2 in order to oust jurisdiction of this Court while exercising its power of superintendence under Article 227 of the Constitution. From perusal of the same, it is evident that the same is not applicable in the present circumstance because of the fact that Article 227 has been introduced subsequently and on account thereof, there was no discussion with regard to exercising of power of superintendence under Article 227 of the Constitution though had held that refusal to allow interrogatories is to be seen at the appellate stage.

11. In like wise manner, in the case of ***Himalayan Coop. Group Housing Society v. Balwan Singh*** as reported in ***(2015) 1 SCC 379*** it is apparent that the same is not going to give any sort of bonanza in favour of Respondent/defendant No.2

because of the fact that the Hon'ble Apex Court had not curtailed the power of superintendence rather had reiterated under para-15 and 16 which is as follows:-

> 15. The first issue need not detain us for long. It is the stand of the learned counsel for the respondents, that, since the Writ Petition that was filed was both under Articles 226 and 227 of the Constitution of India, the Court apart from examining the merits of the Writ Petition could also issue incidental and ancillary directions to do complete justice between parties litigating before
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> it. We do not agree. The issue in our view is no more debatable in view of the decision of this Court in Jai Singh vs. MCD (2010) 9 SCC 385. The Court has stated: (SCC . 390, para 15)
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> 15. …….. we may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. *The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India.* It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints." (emphasis supplied)
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> 16. The scope and extent of power of the Writ Court in a petition filed under Article 226 and 227 of the Constitution came up for consideration before

> three Judge Bench of this Court in the recent case of *Radhey Shyam and Anr v. Chhabi Nath & Ors.*, Civil Appeal No.2548 of 2009. This Court observed that the Writ of Certiorari under Article 226 though directed against the orders of a inferior court would be distinct and separate from the challenge to an order of an inferior court under Article 227 of the Constitution. The supervisory jurisdiction comes into play in the latter case and it is only when the scope and ambit of the remedy sought for does not fall in purview of the scope of supervisory jurisdiction under Article 227, the jurisdiction of the Court under Article 226 could be invoked.

12. Therefore, there happens to be no hitch nor any kind of legal flaw in entertaining as well as maintaining the present petition under Article 227 of the Constitution. However, the same is found limited as well as to be exercised within the bounds of law to persuade the subordinate court to proceed in accordance with law. Therefore, application of Article 227 of the Constitution is not only for correcting the mistakes committed by the subordinate court, rather to aspire the subordinate court to act in accordance with law.

13. Now coming to floor, it is apparent that object and purpose of serving interrogatories is to enable a party to require information from his opponent for the purpose of maintaining his own case and for destroying the case of the adversary and as such, it not only shorten the trial proceeding, save time of the court, it

also deliverance the party from expenses, consumption of time as well as burden to collect and produce evidences. Side by side, it should always be guarded in a way to prevent misuse. Furthermore, as is apparent, it should be confined to the facts which are relevant to the matters in question in the suit. However, under Order-XI Rule 6, 7 the grounds have been enumerated whereupon interrogatories could be refused. Basically, it has been settled at rest by different judicial pronouncement as:-

(i) A party is not entitled to administer interrogatories for obtaining discovery of facts which constitute exclusively the evidence of his adversary's case or title.

(ii) A party is not entitled to interrogate as to any confidential communications between his opponent and his legal adviser.

(iii) A party is not entitled to execute interrogatories which would involve disclosures injurious to public interest

14. Now coming to the controversy over applicability of interrogatory, the Hon'ble Apex Court in ***Raj Narain v. Indira Gandhi*** as reported ***in AIR 1972 SC 1302*** has held:-

> 27. 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".

Viewed thus, interrogatories 1 to 18 as well as 31 must be held to be irrelevant.

15. In ***K. Meenakshisundaram v. S.R. Radhakrishna Pillai*** as reported in ***AIR 1960 Madras 184*** wherein it has been held:-

> 4. The next objection taken by the learned counsel against the maintainability of this civil revision petition was on the ground that the respondent in the original petition was bound to answer the interrogatories as it was intended to simplify the matters before the actual trial of the petition took place; and that as a matter of fact, all the questions that have been included in the interrogatories to be administered to the respondent in the original petition are quite simple and do not lead to any complications; and that it was within the power of the election tribunal to order such interrogatories.
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> It is true that under O. 11, R. 1 and following the rules under that order the election tribunal acting as a tribunal in conformity with the rules of the Civil Procedure Code, is empowered to_ order interrogatories. But, before interrogatories could be ordered it is also incumbent upon the Tribunal functioning as a judicial authority to apply its mind and see the effect, import and significance of the interrogatories that are sought to be administered the respondent by the petitioner in the original petition.
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> Though the interrogatories have been claimed by the learned counsel for the respondent in this civil revision petition to be quite harmless and simple, still, it cannot be denied that when they will be put to the petitioner in this civil revision petition, to be answered by him, there will be a lot of inconvenience, and also incrimination of himself by reason of the answers that he is expected to give to these questions. Simply because the election tribunal has powers under the Civil Procedure Code under which the election tribunal proceedings are to be conducted, it does not mean, however, that all

interrogatories that are submitted to the court could be directed against the respondent forthwith. If there is any objection from the respondent to the answering of these interrogatories, it is the bounden duty of the court to examine as to how far they are tenable in the present case.

A reading of the interrogatories would certainly indicate that these interrogatories are not so innocent and so simple as the learned counsel would appear to make them. That the respondent is not bound to answer the interrogatories which are likely to lead into an incrimination of himself in any criminal offence, has been held in several cases of the English as well as the Indian courts. Suffice it for me to refer to only two decisions of the English cases reported in Queen's Bench Division Vol. II and X. The first decision is in Atherley v. Harvey, 1876-2 QBD 524, where it has been held :

"Interrogatories asking the defendant whether he has composed or published an alleged libel are objectionable, and will be struck out without requiring the defendant to object to them by way of answer."

In this decision it is cited :

"Demurrers to discovery may be arranged under the following heads : 1. That the discovery may subject the defendants to pains and penalties, or to some forfeiture, etc. If, therefore, a bill alleges anything which, if confessed by the answer, may subject the defendant to a criminal prosecution - the defendant may object to the discovery." Lush J. referred to Wigram on Discovery, 2nd Edn. P. 80, S. 130 to the following effect,

"If a question involves a criminal charge, the plaintiff is not entitled to an answer to such question, however material it may be to the plaintiff's case citing Thorpe v. Macauley, (1820) 5 Madd. 218 at p. 229. (1876-2 QBD 524 at pp. 525 and 528). Mellor J. discussed the definition between the powers conferred on the Judges by the Common Law Procedure Act and the Rules of Equity which were binding upon the Judges. The learned Judge held :

"Where there is any conflict between the rules of law and the rules of equity, the rules of equity are to

prevail, and consequently even a tribunal composed of the same Judges, as men though not the same judges in their character as judges, since they are now judges of the High Court, will be no longer governed by the clauses of the Common Law Procedure Act, if those clauses conflict with the rules of equity, but will be governed by the rules of equity." 1876-2 QBD 524 at pp. 525 and 528.

In the instant case, what the learned counsel seeks to emphasise is that it was within the powers of the Tribunal to order interrogatories; and, therefore, he was right in having ordered those interrogatories. But the fact remains that the tribunal did not consider the rules of equity which ought to have been in its mind when it was ordering the interrogatories. As already observed, to possess the power to order is one thing; and to find out whether such interrogatories could be administered at all is another, and in so far as this the election Tribunal does not appear to have exercised its mind in accordance with the rules of equity, despite the fact that the common law denies interrogatories to the respondent. Field J. concurring with Mellor J. has observed,

"It is well established in equity that a bill of discovery for the purpose of obtaining the information which is asked for here would be demurrable, that is, the court of Chancery would not allow the defendant to be harassed by having to answer such questions, but would prevent them from being put," (1876-2 QBD 524 at p. 529).

The third Judge also concurred with the other two Judges. In Lamb v. Munster, 1882-10 QBD 110 at p. 111, it was held,

"An objection to answer interrogatories which is made by affidavit on the ground of the tendency of the answer to criminate the person interrogated may be valid, although not expressed in any precise form of words, if, from the nature of the question and the circumstances, such a tendency seems likely or probable. In an action for libel the defendant pleaded a denial of the publication, and to interrogatories asking him, in effect, whether he published the libel he stated by his affidavit in answer; 'I decline to answer all the interrogatories upon the ground that

my answer to them 'might' tend to criminate me."

16. In ***Jamaitrai v. Motilal Chamaria*** as reported in ***AIR 1960 Calcutta 536***, it has been held:-

> 4. One of the issues in this suit is whether there was a term of business as alleged by the plaintiff and whether payments were made by the plaintiff to the defendants. In the case of Sutherland (Duke) v. British Dominions Land Settlement Corporation, 1926-1 Ch 746, Mr. Justice Tomlin said that the administering of interrogatories is a step which is more often desirable than undesirable and is to be encouraged rather than to be discouraged, because they not infrequently bring an action to an end at an earlier stage than otherwise would be the case, to the advantage of all parties concerned. The observations of Cotton L. J. in Attorney General v. Gaskill (1882) 20 Ch D 519 relied on by Mr. Sen, are as follows :
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> "The right to discovery remains the same, that is to say, 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. It was said in argument that it is not discovery where the plaintiff himself already knows the fact, but that is a mere play on the word 'discovery'. Discovery is not limited to giving the plaintiff a knowledge of that which he does not know, but includes the getting an admission of anything which he has to prove on any issue which is raised between him and the defendant. To say that the pleadings have raised issues and that therefore the interrogatories should not be allowed is an entire fallacy. The object of the pleadings is to ascertain what the issues are, the object of interrogatories is not to learn what the issues are, but to see whether the party who interrogates cannot obtain an admission from his opponent which will make the burden of proof easier than it otherwise would have been."
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> 5. In accordance with the general rules as to discovery interrogatories may not extend to the evidence where with the opposite party intends to

support his case at the trial, or to the contents of his opponent's brief or to the names of his witnesses or to the facts which merely support the case of the party interrogated. Interrogatories must be confined to matters which are in issue or sufficiently material at the particular stage of the action at which they are sought to be delivered, or to the relief claimed including the amount of the damages, and as a general rule, perhaps to matters which are relevant to the facts directly in issue, but under some circumstances they may extend to the facts the existence or non-existence of which is relevant to the existence or non-existence of the facts directly in issue. In the case of Marriot v. Chamberlain, (1886) 17 QBD 154, in an action for libel where the defendant pleaded that the statement made was true, the Court allowed interrogatories to be administered to the plaintiff as to the person in whose hands he had seen a certain letter which the plaintiff alleged had been signed by the defendant, but which the defendant alleged to have been fabricated by the plaintiff, and the names and addresses of persons to whom the letter had been sent. Lord Esher M.R. held that the interrogatories are permissible as relating to matters which, though not directly in issue, are material to the issue and that the right to interrogate is not confined to the facts directly in issue, but extends to any facts the existence or non-existence of which is relevant to the existence or non-existence of the facts directly in issue. It has also been held that enquiries as to facts which tend to show that the defence set up is unfounded ought not to be excluded because the matters enquired after are not directly relevant to the issue in the case, but only tend to show that the defence set up is not a real one. (See Re : Morgan; Owen v. Morgan (1888) 39 Ch D 316).

6. Interrogatories should be confined to obtaining from the party interrogated admissions of facts which it is necessary for the party interrogating to prove in order to establish his case. In the case of Nash v. Layton, (1911) 2 Ch 71, the defendant pleaded that the plaintiff was a money lender and the defendant was held entitled to interrogate the, plaintiff as to what other loans he had transacted

during a reasonable period before the loan in question and as to what security and at what rate of interest. Where an account is claimed or questions of account arise, interrogatories as to details of the accounts may be allowed.

17. Whether Respondent/defendant no.1 could be directed as has been refused by the learned lower court is found fully answered in the case of ***Thakur Prasad v. Md. Sohayal*** as reported in ***AIR 1977 Patna 233*** wherein it has been held:-

2. That may be one of the grounds, but in my opinion there is yet another and stronger ground to maintain the order. The right of making discovery and inspection is given under O. XI of the Civil P. C. The main object of interrogatories is to save expenses and time by enabling a party to obtain from his opponent information as to facts material to the questions in dispute between them and to obtain admissions of any facts which he has to prove on any issue which is raised between them. An admission of the adversary will serve to maintain the case of the party administering the inter-rogatory or the answer might be destruc-tive of his own case. A party therefore who has not chosen to appear in the case and contest the plaintiff's suit can-not be asked either to discover any document or to answer any question on interrogatories. This view also seems to in keeping with the penal clause pro-vided under R. 21 of O. XI which pro-vides that where any party fails to com-ply with any order to answer interrogatories, or for discovery or inspection of his suit dismissed for want of prosecu-tion, 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, this penalty cannot be visited to a defendant who has not chosen to appear to contest a suit. Although there does not appear to be any decision of any High Court of India, to me on con-sideration of the entire scheme of the Order, it appears that interrogatories as a general rule

should not be served until after the defence is filed as until then, it is not possible to fix the area of the controversy between the parties and the very purpose of this provision cannot be fulfilled.

18. Therefore, importance as well as purpose of interrogatory is found duly highlighted at every occasion whenever the matter has come up for adjudication. Apart from identifying the criteria over which interrogatories are not permissible, in terms of Order-XI Rule 6, it should not be "fidgety". From perusal of Annexure-5, it is evident that the questionnaire so formulated are not only fishing rather is based upon pre-determined mindset, and on account thereof, its answer if allowed will incriminate and thus, rightly been refused by the learned lower court.

19. Hence, instant petition is found devoid of merit and is, accordingly, rejected. However, it will not barricade the parties to revisit, in case, proceeded in accordance with law.

(Aditya Kumar Trivedi, J)

Patna High Court
January 12th 2016
Perwez/AFR

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