

Rajasthan High Court - Jodhpur

Govind Narayan & Ors vs Nagendra Nagda & Ors on 4 September, 2017

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR S.B. Civil Writ Petition No. 7803 / 2016

1. Govind Narayan S/o Shri Jorawar Nath Nagda, Aged about 70 years, Resident of Bhatiyani Chouhatta, Ashapal Ki Gali, Udaipur.
2. Shailesh Nagda S/o Shri Govind Narayan, Aged about 40 years, Resident of Bhatiyani Chouhatta, Ashapal Ki Gali, Udaipur.
3. Smt. Jaswant Nagda W/o Late Shri Panna Lal Nagda, Aged about 74 years, Resident of Sisaram, Tehsil Girwa, District Udaipur.
4. Smt. Renu Nagda W/o Shri Govind Narayan, Aged about 68 years, Resident of Bhatiyani Chouhatta, Ashapal Ki Gali, Udaipur.
5. Smt. Geeta Sharma W/o Shri Bhagwati Prasad Sharma, Aged about 55 years, Resident of Near Ashapal Temple, Bhatiyani Chouhatta, Udaipur.
6. Panna Lal S/o Shri Modi Lal Nagda, Resident of Sisaram, Tehsil Girwa, District Udaipur through his legal representatives :-

6/1. Vijendra Narayan S/o Late Shri Panna Lal Nagda, aged about 58 years, Resident of Sisaram, Tehsil Girwa, District Udaipur.

6/2. Krishna Chandra S/o Late Shri Panna Lal Nagda, aged about 53 years, Resident of Sisaram, Tehsil Girwa, District Udaipur.

6/3. Dinesh Chandra S/o Late Shri Panna Lal Nagda, aged about 52 years, Resident of Sisaram, Tehsil Girwa, District Udaipur.

----Petitioners Versus

1. Nagendra Nagda S/o Shri Ghanshyam Lal Bhatt, Resident of 126, Navratna Complex, Bedla Road, Udaipur.

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2. Smt. Meenu Bhatt W/o Shri Mohan Lal Bhatt, Resident of Bhatiyani Chouhatta, Udaipur.
3. Harish Bhatt S/o Shri Ghanshyam Lal Bhatt, Resident of Bhatiyani Chouhatta, Udaipur.

4. Ghanshyam Lat Bhatt S/o Shri Bhuvani Narayan Bhatt, Resident of Bhatiyani Chouhatta, Ashapal Ki Gali, Udaipur.

5. Smt. Maya Bhatt W/o Shri Harikant Bhatt, Resident of Bhatiyani Chouhatta, Ashapal Ki Gali, Udaipur.

6. Andhra Bank through Senior Branch Manager, Andhra Bank, Shakti Nagar, Udaipur.

----Respondents _____ For
Petitioner(s) : Mr. R.K. Thanvi, Sr. Advocate with Mr. Ashok Thanvi & Mr. Narendra Thanvi.

F o r R e s p o n d e n t (s) : M r . D a l p a t R a j B h a n d a r i
_____ JUSTICE DINESH

MEHTA Judgment Reportable 04/09/2017 The supervisory writ jurisdiction of this Court, under Article 227 of the Constitution of India has been invoked by the petitioners, oppugning the order dated 21.05.2016 passed by the learned Additional District Judge No.2, Udaipur (hereinafter referred to as the Trial Court), whereby an application under Order XI Rule 1 read with Section 151 of the Code of Civil Procedure, seeking leave to admit interrogatories has been rejected.

(3 of 23) [CW-7803/2016] The facts in a nutshell, within the confines of the application under consideration and order passed pursuant thereto are that the plaintiffs- respondents No.1 to 4 filed a suit for rendition of accounts and permanent injunction against the petitioner - defendants, having control over the partnership business of a firm known as 'Hotel Vinayak'.

The plaintiffs and defendants, with a view to carry on hotel business, formed a partnership firm by executing a partnership deed dated 09.03.1990. The said firm predominantly comprised of brothers and sisters, out of whom Govind Narayan, the defendant No.1, - became a Managing partner and the firm came into existence with effect from 01.02.1989.

With the passage of time, there developed certain differences and disputes, which led the plaintiffs to institute a suit on 25.05.2004, for rendition of accounts.

The defendants filed their written statement and then the defendants No. 1 to 6 moved an application dated 05.08.2004, under Order XI Rule 1 of the Code, seeking to administer a series of questions, requiring the plaintiff to answer.

By way of the said application, the petitioners posed as many as 26 questions, mostly hovering around the title of the land on which the hotel has been constructed, while a few of them were other questions which required pointed answers from various plaintiffs and defendant No.7. While submitting the application, the petitioner stated that as a result of the interrogatories, the proceedings would not be unnecessarily protracted and the suit (4 of 23) [CW-7803/2016] would be decided effectively and the otherwise uncalled for evidence would be avoided.

The subject application under Order XI Rule 1 of the Code of Civil Procedure, though filed for the avowed object of deciding the suit expeditiously, but came to be considered and decided by the Trial Court only after twelve years, vide the order dated 21.05.2016, which has been made a subject matter of the present petition.

The learned Trial Court after hearing the parties on the application rejected the same, vide its order dated 21.05.2016, with the following reasoning:-

^i=koyh ds voyksdu ls ;g rF; mHkj dj vkrk gS fd vf/kdre iz'u Hkkxhnhkj QeZ ftl Hkw[k.M ij lafLFkr gS] mlds {ks=Qy ls lEcF/kr gSa] tcfd oknh dk okn fglkc Qsgeh dk gSaA iz'u oknhX.k ds okn i= ds vfHkopuksa ls lEcF/kr gSa] ftu ij izfroknH viuk i{k tokc nkos esa j[k pqads gSA izfroknH.k dk ;g dFku fd ;g izkFkZuk le; cpkus ds fy, cpr gsrq is'k fd;k x;k gSa] ysfdu ;g dFku fojks/kkHkklh dFku gSa] D;ksafd ;g okn lu~ 2004 ls yfEcr gSa o izkFkZuk i= ds lkFk layXu iz'uhdj.k fdllh Hkh :i esa okn ds _tq fuiVkj; ;k [kpksZa esa cpr ds fy, vko';d ugha yXrs gSaA ifjiz'uksa dk uspj ,slk gS fd izfroknH buds tfj, oknh ls Øksl ,Dtkfeus'ku djuk pkg jgk gksA pwafd vkns'k 11 fu;e 1 fl-i-la- ds ijUrQd esa ;g of.kZr gS fd os ifjiz'u tks okn esa iz'uXr fdUgha fo"i;k;sa ls lEcF/kr ugha gSa] bl ckr ds gksrs gq, Hkh folaxr le>sa tk,Xs fd lk{kH dh ekSf[kd izfrijh{k esa os xZkg~; gksrsA ,slh n'kk esa izfroknH.k dk mDr izkFkZuk i= Lohdkj fd;s tkus ;ksX; ugha gksus ls vLohdkj dj [kkfjt fd;s tkus ;ksX; gSaA vkns'k ifj.kker% izfroknH la;k 1 ls 6 dh vksj ls ,d vkosnu vUrxZr vkns'k 11 fu;e 01 lifBr /kkjk 151 fl-iz-la- fnukafdr 05-08-2004 dks vLohdkj dj [kkfjt fd;k tkrk gSA** (5 of 23) [CW-7803/2016] Calling in question the order dated 21.05.2016, Mr. R.K.

Thanvi, learned Senior Counsel navigated this Court through the application dated 05.08.2004 as well as the interrogatories annexed therewith and submitted that the entire purpose of requiring answer from the opposite party or seeking discovery through interrogatories, as envisaged under Order XI of the Code of Civil Procedure is to ensure speedy determination of the contentious questions and effectual adjudication of the issues; so that the relevant and necessary facts for deciding the issues can be ascertained.

After addressing on the importance of the provisions relating to interrogatories, Mr. Thanvi dropped many questions out of the otherwise prolix questionnaire, fairly conceding that the questions relating to the title and ownership of the land, encapsulated in questions No.1 to 6, 10, 11, 13, 15 and 17 be treated as not pressed, as they are not germane to the lis. In the same breath, Mr. Thanvi contended that all the questions, except those he has dropped, are not only relevant but necessary for effective and expeditious disposal of the suit.

Assailing the impugned order dated 21.05.2016 learned senior counsel argued that Court below has rejected the petitioners' application vide an absolutely non-speaking and unreasoned order. He asserted that the Trial Court has rejected petitioners' application only on account of the long pendency of the suit (since 2004). Adding that the order under challenge neither deals with petitioners' contentions nor does it delve upon the relevance of the questions furnished by the petitioners, for (6 of 23) [CW-7803/2016] which, the impugned order deserves to be set aside, he

emphasised.

Mr. Thanvi further argued that mere holding that the enclosed questionnaire does not appear to be necessary for the effective adjudication of the suit and saving the cost is not enough; the Trial Court is required to give its reason for coming to such a conclusion.

He relied upon the judgment of this Court reported in 1994 (2) RLW Page 714 Heeralal Vs. Laxmichand and claimed parity of treatment to his application, as in almost identical circumstances, this Court in Para No.6 of the said judgment held that the interrogatories served were required to be permitted and just because the facts in question can be proved by other evidence, cannot be a ground for refusing the permission to serve the same. It will not be out of place to reproduce the relevant part of the aforesaid judgment, which is being done hereinunder:-

"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 Jamaitrai Bishansarup Vs. Rai Bahadur Motilal Chamaria (1) wherein it has been observed as under:-

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

(7 of 23) [CW-7803/2016] Addressing on the scope of interference under Article 227 of the Constitution of India, learned counsel placed heavy reliance upon judgment of this Court reported in 2004 (3) DNJ Rajasthan 1533 (Ramnarayan Vs. The Authority under Payment of Wages Act). Referring to para 23 of the said judgment, learned senior counsel urged that the Court should exercise its supervisory jurisdiction in the present case, as the order under challenge is arbitrary and capricious and the findings recorded therein are perverse. Para 23 of the said judgment is being reproduced hereinunder, for the sake of ready reference :-

"23. The poser of general superintendence conferred by Art. 227 involves a duty on the part of the High Court to keep all courts and Tribunals within its territorial jurisdiction within the bounds of their authority, to see that they do what their duty requires and they do it in a legal manner. This means that the High Court can interfere in cases of :-

(a) Erroneous assumption or excess of jurisdiction.

(b) Refusal to exercise jurisdiction.

(c) Error of law apparent on the fact of the record, as distinguished from a mere mistake of law or error of law relating to jurisdiction.

(d) Violation of principles of natural justice.

(e) Arbitrary or capricious exercise of authority, or discretion.

(f) Arriving at a finding which is perverse or based on no material."

Mr. Thanvi then cited a judgment of Kerala High Court reported in AIR 2000 Kerala Page 25 to lend support to his contentions that the impugned order deserves to be set aside and (8 of 23) [CW-7803/2016] the matter requires to be remanded, as the Court below has rejected admissibility of the interrogatories without passing a speaking order.

Per contra, Mr. D.R. Bhandari canvassing the cause of the plaintiffs, at the outset submitted that the present writ petition under Article 227 of the Constitution of India is not maintainable. Keeping his right of satisfying the Court on merits of the order reserved, he urged that the Court below has exercised its discretion in not admitting the interrogatories; which order should not be interfered with lightly and freely by this Court. He went ahead to argue that the order under challenge, even if found to be a wrong order, cannot be interfered with, until and unless it is shockingly perverse and prejudicial to the cause of the petitioners. Mr. Bhandari relied upon various judgments in support of this argument. The relevant part/paragraph thereof with the particulars of the report/journal are reproduced hereunder:-

AIR 1988 SC Page 184 Para 13 :-

"13. The intention here is manifest. In any event this is a possible view that could be taken. This court in Venkatlal G. Pittie v. Bright Bros. (Pvt.) Ltd. (1987) 2 Scale 115 : (AIR 1987 SC 1939) and Beopar Sahayak (P) Ltd. v. Vishwa Nath (1987) 2 Scale 27 : (AIR 1987 SC 2111) held that where it cannot be said that there was no error apparent on the face of the record, the error if any has to be discovered by long process of reasoning and the High Court should not exercise jurisdiction under Art. 227 of the constitution. See in this connection the observations of this Court in Satyanarayan Laxminarayan Hegde v. mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137. Where two views are possible and the trial court has taken one view which is a possible and plausible view merely because (9 of 23) [CW-7803/2016] another view is attractive, the High Court should not interfere and would be in error in interfering with the finding of the trial court or interfering under Art. 227 of the Constitution over such decision."

2002 (8) SCC Page 400 :-

"Even wrong decisions made by lower courts cannot be interfered with under Art. 227, if such decisions have been made within jurisdiction of the lower court."

With the help of the aforesaid judgments, Mr. Bhandari vehemently contended that this Court should not examine the correctness and propriety of the impugned order.

Adverting to the merits of the order, learned counsel for the respondents submitted that the Court below has passed a well reasoned, though a crisp order, on the petitioners' application. He submitted that the Court below has decided petitioners' application on the anvil of the provisions contained in Order XI and the principles governing it. He contended that the proposed questions are neither relevant nor helpful in the expeditious and effectual disposal of the suit, which was admittedly a suit for rendition of accounts. He further asserted that the learned Trial Court has rightly observed that the nature of questions is such, as if the defendants are seeking to cross-examine the plaintiffs.

Stating that the sole object of the petitioner - Managing partner of the firm is to protract the suit proceeding, so that he can continue to enjoy the supremacy in the partnership firm, Mr. Bhandari submitted that no fruitful purpose would be served by soliciting answers to the questions mentioned in the (10 of 23) [CW-7803/2016] interrogatories. He added that these questions could very well be posed to the witnesses, during the course of evidence. He painstakingly submitted that it is because of the conduct of the petitioners themselves, that the application under consideration filed way back in 2004 could be decided only after twelve years of its filing.

Learned counsel for the respondents cited judgment of the Hon'ble Supreme Court, reported in AIR 1972 SC 1302 (Raj Narayan Vs. Smt. Indira Gandhi) and submitted that the questions that may be relevant during cross-examination are not necessarily relevant as interrogatories. The relevant excerpt is produced below :-

"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."

Before dilating upon the question involved in the present petition, it would be apposite to quote the questions qua which the petitioners have confined their writ petition:-

P¹/₄7¹/₂ D;k oknh la[;k&1 ls 4 ,oa izfroknh la[;k&7 } kjk lgk;d funsZ'kd Hkwfe ,oa Hkou dj foHkkx ds le{k dj fu/kkZj.k dh dk;Zokgh esa Hkkx fy;k x;k \ ¹/₄8¹/₂ D;k lgk;d funsZ'kd Hkwfe ,oa Hkou dj foHkkx us vkns'k fnukad 25&1&1992 ds }kjk 19]337-5 oxZQhV Hkwfe (11 of 23) [CW-7803/2016] gksVy fouk;d ds fefYd;r dh ekurs gq, ,d ;wfuV dh gksuk ekuh \ ¹/₄9¹/₂ D;k 19]337-5 oxZQhV Hkwfe ,oa mlij cus gksVy dk ewy;kadu djrs gq, lgk;d funsZ'kd Hkwfe ,oa dj foHkkx }kjk dj fu/kkZj.k fd;k x;k ,oa D;k vfUre dj fu/kkZj.k vkns'k ds vuqlkj dj dh jkf'k tek djkbZ xbZ] ;fn gki rks fdlds }kjk

tek djkbZ xbZ \ $\frac{1}{4}12\frac{1}{2}$ D;k oknh la[;k&4 ds iq= ,oa oknh la[;k&2 ds ifr Jh eksgu yky HkV~V us fnukad 6 tqykbZ] 1996 dks izfroknh la[;k&1 ds lkFk gkFkkikbZ] ekjihV ,oa xkyhxyksp dh] ftdh oknh la[;k&1] 3 ,oa 4 lfgr vU; Hkkxhnhkjksa us fuUnk djrs gq, rFkk izLrko ikfjr djrs gq, izfroknh la[;k&1 dks vf/kd`r fd;k fd os eksgu yky HkV~V o muds ifjokj ds lnL;ksa dks gksVy esa izos`k dh vuqefr ugha nsosa rFkk bl lEcU/k esa ;g izLrko Hkh ikfjr fd;k fd Jherh ohuw HkV~V } kjk {kek&;kpuk ugha djus ij Hkkxhnhkj QeZ ls fu"dkflr djus gsrq uksfVl fn;k tkos] ftd gsrq Hkh izfroknh la[;k&1 dks vf/kd`r fd;k x;k \ $\frac{1}{4}14\frac{1}{2}$ D;k oknh la[;k&1 ls 4 rFkk izfroknh la[;k&7 }kj k vk;dj fooj.kh nkf[ky dh tkrh gS] ;fn gki rks dc ls \ $\frac{1}{4}16\frac{1}{2}$ D;k oknh la[;k&4 us QeZ ds O;olk; lapkyu ls dj fu/kkZj.k o"kZ 2002&2003 rd dh vof/k dh vk;dj fooj.kh esa QeZ esa vius fgLls ds ykHk&gkfu ds vuqikr dks crk;k gS rFkk QeZ ls mBkbZ xbZ jkf'k crkbZ gS] ;fn gka rks dffkr vuqikr ,oa mBkbZ xbZ jkf'k fdruh] dSls ,oa fdl vk/kkj ij crkbZ xbZ gS rFkk D;k ykHk&gkfu ds vuqikr dh jkf'k o mBkbZ xbZ jkf'k fcuk fglke ns[ksa vk;dj fooj.kh esa n'kkZbZ xbZ \ $\frac{1}{4}18\frac{1}{2}$ D;k oknh la[;k&3 us QeZ ds O;olk; lapkyu ls dj fu/kkZj.k o"kZ 2003&2004 rd dh vof/k dh vk;dj fooj.kh esa QeZ esa vius fgLls ds ykHk&gkfu ds vuqikr dks crk;k gS rFkk QeZ ls mBkbZ xbZ jkf'k crkbZ gS] ;fn gki rks dffkr (12 of 23) [CW-7803/2016] vuqikr ,oa mBkbZ xbZ jkf'k fdruh] dSls ,oa fdl vk/kkj ij crkbZ xbZ gS rFkk D;k ykHk&gkfu ds vuqikr dh jkf'k o mBkbZ xbZ jkf'k fcuk fglke ns[ks vk;dj fooj.kh esa n'kkZbZ xbZ \ $\frac{1}{4}19\frac{1}{2}$ D;k oknh la[;k&2 ds ifr dk uke Jh eksgu yky HkV~V gS] ftudk oknh la[;k&2 dks lfEefyr djrs gq, fgUnw vfoHkkftr ifjokj gS ,oa bl :i esa oknh la[;k&2 ds ifr } kjk vk;dj foHkkx esa fooj.kh nkf[ky dh tkrh gS] ftds ijekusUV ,dkmUV uEcj ,lh,p,e&1814 ,y gSa \ $\frac{1}{4}20\frac{1}{2}$ D;k oknh la[;k&2 ds ifr us la;qDr fgUnw vfoHkDr ifjokj ds drkZ ds :i esa O;olk; lapkyu ls dj fu/kkZj.k o"kZ 2002&2003 rd dh vof/k dh vk;dj fooj.kh esa QeZ esa vius fgLls ds ykHk&gkfu ds vuqikr dks crk;k gS rFkk QeZ ls mBkbZ xbZ jkf'k crkbZ gS] ;fn gki rks dffkr vuqikr ,oa mBkbZ xbZ jkf'k fdruh] dSls ,oa fdl vk/kkj ij crkbZ xbZ gS rFkk D;k ykHk&gkfu ds vuqikr dh jkf'k o mBkbZ xbZ jkf'k fcuk fglke ns[ks vk;dj fooj.kh esa n'kkZbZ xbZ \ $\frac{1}{4}21\frac{1}{2}$ D;k oknh la[;k&1 dk vk;dj foHkkx esa th-vkbZ-vkj-

uEcj ,u&205@,lh gS \ $\frac{1}{4}22\frac{1}{2}$ D;k oknh la[;k&1 us QeZ ds O;olk; lapkyu o"kZ ls vktrd vk;dj foHkkx esa vk;dj fooj.kh nkf[ky dh gS] ;fn gki rks D;k oknh la[;k&1 us vk;dj fooj.kh esa bl Hkkxhnhkj QeZ esa ykHk&gkfu ds vuqikr dks n'kkZ;k gS rFkk QeZ ls mBkbZ xbZ jkf'k dks n'kkZ;k gS] ;fn gka rks ykHk&gkfu dk ,slk vuqikr ,oa mBkbZ xbZ jkf'k dk o.kZu vk;dj fooj.kh esa D;ksa] dSls ,oa fdl vk/kkj ij fd;k x;k gS rFkk D;k ykHk&gkfu ds vuqikr dh jkf'k o mBkbZ xbZ jkf'k fcuk fglke ns[ks vk;dj fooj.kh esa n'kkZbZ xbZ gS \ $\frac{1}{4}23\frac{1}{2}$ oknhX.k }kj k okn i= esa ;g vafdr fd;k x;k gS fd uxSUnz ukxnk }kj k fglke psd fd;k tkrk Fkk rFkk mldk ,rjkt fd;k tkrk FkkA uxSUnz ukxnk }kj k dc&dc D;k&D;k (13 of 23) [CW-7803/2016] ,rjkt fd;k x;k ,oa D;k ,slk dksbZ ,rjkt fyf[kr esa fn;k x;k \ $\frac{1}{4}24\frac{1}{2}$;fn Jh uxSUnz ukxnk }kj k dksbZ ,rjkt fd;k x;k rks D;k ml ,rjkt dk fujkdj.k gks x;k ,oa mlds ckn gh oknhX.k }kj k vk;dj fooj.kh esa rREcU/kh vadu fd;k x;k \ $\frac{1}{4}25\frac{1}{2}$ D;k ;wfu;u cSad vkWQ bf.M;k ls fy;s x;s _k isVs vUr esa 3]71]510@& #i;s cdk;k jgs] ftdh vnk;Xh ds ckjs esa lHkh Hkkxhnhkjksa ds e/; cSad eSustj dh mifLFkfr esa ;g r; ik;k x;k Fkk fd cdk;k jkf'k dh vnk;Xh QeZ ds lHkh Hkkxhnhkj QeZ esa vius ykHk&gkfu ds vuqikr ds vuqlkj vnk djsaxs] fdUr q oknh la[;k&4 }kj k vius va`k dk Hkqxrku djus ls euk dj nsus ds dkj.k muds va`k dh 50 izfr`kr jkf'k dk Hkqxrku xhrk `kekZ }kj k fd;k x;k \ $\frac{1}{4}26\frac{1}{2}$ oknhX.k }kj k okn i= esa ;g vafdr fd;k x;k gS fd fglke&fdrke xyr rjhds ls j[kk x;k tefd oknhX.k }kj k okn i= esa ;g

dFku Hkh fd;k x;k gS fd oknh la[;k&1 }kjk fglkc&fdrkc ns[kus cker lfØ; Hkwfedk fuHkbbZ tkrh Fkh rFkk fglkc&fdrkc ds dPps fpV~Bs dh udy mlds }kjk yh tkrh FkhA bl izdkj bl LFkku ij bl iz'u dk mRrj fn;k tkuk vko';d gS fd fglkc&fdrkc esa D;k xyrh Fkh ,oa bl lEcU/k esa lfØ; Hkwfedk fuHkkusokys uxSUnz ukxnk }kjk D;k ,rjkt fd;k x;k ,oa mldk fujkdj.k gqvk ;k ugha] ;fn ugha rks mlds }kjk vk;dj fooj.kh fdl vk/kkj ij izLrqr dh xbZ \β For the purpose of deciding the controversy in question, it would be profitable to keep the provisions of Order XI Rule 1 of the Code of Civil Procedure handy, which are quoted hereunder:-

"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 (14 of 23) [CW-7803/2016] 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."

A reading of the provisions aforesaid, in light of judgments of various High Courts and Supreme Court reveals that the whole purpose of interrogatories is to seek admission of a party on matter in dispute so that the issues can be accordingly framed, minimizing the contentious issues or disputes left for the adjudication of the Court, with the ultimate object of facilitating an early and expeditious disposal of the suit.

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 introducing this provision appears to (15 of 23) [CW-7803/2016] secure all material documents and to put an end to lengthy enquiry with respect to document/material in possession of the other party. In such situation however, no adverse inference can be drawn against a party for non-production of the document, unless a notice is served and procedure followed.

Allahabad High Court in Company Petition No.13 of 1967 decided on 08.07.1968 in the matter of Aluminium Corporation of India Ltd. Vs. Lakshmi Ratan Cotton Mills Co. Ltd. discussed the relevance and object of the provisions contained in Order XI of the Code of Civil Procedure and held that 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 a disclosure beforehand of evidence supporting the adversary's case as this would give one party an unfair advantage over the other. The object of Order XI, Civil Procedure Code, is more akin to that of Order X, Civil Procedure Code, than to that of cross-examination.

A perusal of the corresponding substantive provisions contained in Section 30 of the Code of Civil Procedure shows that the Court has been clothed with a power to order discovery or permit interrogatories at any time. Order XI Rule 1 of the Code contemplates service of interrogatories on the opposite party, with a leave of the Court. A close and conjoint reading of these two (16 of 23) [CW-7803/2016] provisions make it clear that 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.

Under the cloak of the provisions of Order XI, one party cannot be permitted to have roving or fishing enquiries in respect of matters which are not germane to the suit. That 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 relevant for the purpose of interrogatories.

The power to order interrogatories to be served and eliciting the answer should be used with utmost care and caution, so as to avoid its abuse by any party. The interrogatories must be confined to facts relevant to the matter in question in the suit. Interrogatories which are really in nature of cross-examination will not be allowed (Bhakta Charan Mallik Vs. Nataorar mallik AIR 1991 Orissa 319).

Bombay High Court in its judgment rendered in case of Sonia Senroy of Mumbai Vs. Amit Senroy of Mumbai reported in AIR 1998 Bombay 302 has held that it is 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 to destroy the case of the adversary. The power to serve interrogatories is (17 of 23) [CW-7803/2016] 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.

Upon perusal of various judgments of High Courts and wading through the commentaries on Order XI Rule 1 of the Code, the underlying principles of discovery by interrogatories can be cataloged as infra :-

Interrogatories which do not relate to any matter in question in the suit should be deemed to be irrelevant. Interrogatories may be set aside on the ground that they have been administered unreasonably or vexatiously or struck off on the ground that they are prolix, oppressive, unnecessary or scandalous.

Adverting to the judgment of this Court, cited by the learned counsel for the petitioners i.e. Heera Lal Vs. Laxmi Chand (supra), it is to be noticed that on the facts of the said case this Court held that the interrogatories which have been permitted to be serve on defendant are relevant and closely connected to the fact relevant to issues No. 2, 3 and 6 while holding that the Court below has not erred in permitting the interrogatories. A careful reading of the said judgment shows that the learned Trial Court had permitted the plaintiff to deliver interrogatories for the examination of the defendant, which reasoning and finding has been affirmed by this Court.

The above judgment is entirely based on the facts obtaining in that case, wherein this Court, on appreciation of the factual (18 of 23) [CW-7803/2016] matrix found that the questions with the interrogatories were relevant and germane to the matters in dispute.

Whereas in the present case, all questions including the questions for which the petitioner has confined his case before this Court, are such questions which can be proved or established by way of evidence or cross-examination. The learned Court below has found that the interrogatories posed by the petitioner in present suit for rendition of accounts are not relevant. Though this Court is of prima facie opinion that some of the questions sought to be raised by way of the interrogatories under the provisions of Order XI Rule 1 may be relevant, but such questions can be posed and the facts can be proved, during the course of examination in chief or during the cross-examination of the witness. These questions would neither save the time of the Court nor would they cut the cost.

The second judgment cited by Mr. Thanvi in case of Ramnarayan Vs. The Authority under Payment of Wages Act & Ors. (supra) is an authority on the scope of interference under Article 227 of the Constitution of India. With the help of para No.23, particularly the contingencies (e) and (f), he urged that this Court should interfere in the contentious order passed by the Court below, as the same is arbitrary and capricious exercise of authority or discretion and that the Court below has arrived at a finding which is perverse or based on no material, when tested on the principle enunciated by this Court in the aforesaid judgment.

(19 of 23) [CW-7803/2016] On appraisal of the facts involved in the case it cannot be said that the order impugned dated 21.05.2016 passed by the learned Trial Court suffers from the infirmities alleged by the petitioners. The findings arrived at by the Court below cannot be said to be perverse and/or based on no material. Learned Court below has exercised a discretion duly vested in it, after appreciation of the material available with it and has held that the questions posed by the applicants-defendants mostly relate with the land on which the hotel building has been raised/constructed, which, if asked, would neither save time nor the cost.

If the finding of the Court below is considered being mindful of the fact that the suit in question is pending for more than 12 years, this Court feels that serving of the interrogatories and seeking answers thereof would lead to more complications and protraction of the litigation rather than reducing it.

In the judgment reported in AIR 2000 Kerala page 24 particularly para 6, Kerala High Court had held that the administering of interrogatories is definitely a subject which is more often desirable

than undesirable and to be encouraged rather than to be discouraged, because they frequently bring an action to end at an earlier stage, and it would be a case, to the advantage of all parties concerned thereby, shortening the life- span of the litigation.

The principle laid down by the Kerala High Court cannot be disputed, but such principles have to be tested on the facts of the case.

(20 of 23) [CW-7803/2016] A scrutiny of the factual matrix of the case before Kerala High Court reveals that the suit in question was filed in the year 1997 in the special Court Kozhikode, wherein an interlocutory application No. 6076/1996, seeking interrogatories came to be filed. The order on such application passed by the Trial Court was unreasoned and without any consideration of the material facts for which the Kerala High Court had quashed the same. Apart from this, the application under Order XI came to be filed by the concerned applicant at the initial stage of the suit, i.e. within a year of its institution.

However in the present case, though the application under consideration had been filed in the year 2004 itself, yet the same remained pending for 12 long years, by which time the suit itself has reached the stage of recording of evidence.

After hearing learned counsel for the parties and upon perusal of the material available on record, including the application dated 05.08.2004 filed under Order XI Rule 1 of Code of Civil Procedure seeking to admit the interrogatory along with the questionnaire submitted therewith; the judgments cited by the rival counsels; and the order impugned, this Court sees no reason to exercise its supervisory jurisdiction in interfering with the order impugned dated 21.05.2016.

A perusal of the order impugned shows that though the Court below has not dealt with each of the 26 questions individually, while holding that the application has no substance and observing that most of them deal with the land on which the (21 of 23) [CW-7803/2016] hotel buildings has been constructed, but has reached to a conclusion that the remaining questions are not relevant in the suit, which is primarily a suit for rendition of accounts.

A reading of the questions to which the petitioners have confined their writ petition makes it clear that the answers to these questions can well be sought from the relevant witnesses, when they appear in the witness box. The concerned person(s) may be called to the witness box, if they choose not to come forward for the purpose of leading of their evidence. The Code of Civil Procedure is a complete and comprehensive code, having conceived almost all situation, providing for ready answer and remedy for such contingency.

This Court concurs with the view of the learned Court below that the stand of the petitioners is self contradictory, when they contended that the questionnaire was for the purpose of saving the time, completely being oblivious of the fact that the application which was filed way back in 2004 for the so called saving of the time, came to be decided after twelve years of its filing. As such the arguments in support of their attempt to admit the interrogatories are by themselves illusive. In the facts of the present case, this Court feels that admitting the interrogatories, as envisaged under Order XI of the

Code of Civil Procedure would rather put on hold or prolong the proceedings, than precisely and conclusively bringing a quick closure to it.

The list of questions furnished by the defendants, despite dropping a few of them, continues to be copious, out of which (22 of 23) [CW-7803/2016] many may or may not be relevant even during the cross-examination. The Court can very well permit or restrain the petitioners to ask the question(s), looking to its/their nature and the person to whom such questions are posed. The Court by permitting such questions cannot foreclose the right of the plaintiffs.

The stage of the suit is a very significant aspect to be borne in mind, while deciding an application admitting or permitting interrogatories. As stated above, the whole idea or purpose of the provisions contain in Order XI Rule 1 of the Code is to save time and cost by confining the controversy or narrowing down the points of differences or disputes. Hence, the Court can be a bit liberal in admitting the interrogatories at the initial stage of a suit but the same standards cannot be applied at the advanced stage of the trial; when the evidence of the parties has begun. Interrogatories cannot be permitted, once the evidence of the concerned opposite party is over.

On overall conspectus of facts and law, this Court is of the considered view that the order impugned is just and proper, though it could have been a bit more comprehensive. The Court has committed no wrong in rejecting the application, keeping the stage of the suit under consideration. The petitioners could not convince the Court as to how the order impugned is prejudicial to the cause of the petitioners. There is neither any material irregularity nor any wrongful exercise of jurisdiction, warranting interference by this Court.

(23 of 23) [CW-7803/2016] Needless to clarify that the petitioners would still have their right preserved, to ask these questions to the plaintiffs/ plaintiffs' witnesses, during the course of cross-examination. As a result of rejection of their application under Order XI Rule 1 of the Code of Civil Procedure, the petitioners' right have not even been impacted, much less substantially and adversely effected.

To conclude, this Court does not find any force in the present writ petition.

The Petition is thus dismissed.

(DINESH MEHTA), J.

Anurag Shukla/-