

DEDIGAMA
v
DEDIGAMA AND ANOTHER

COURT OF APPEAL
WIMALACHANDRA, J.
CALA 91/2004 (LG)
DC NEGOMBO 5307/D
JUNE 27, 2005

Civil Procedure Code – Sections 98, and 100 interrogatories – Refusing to answer – Court to hold inquiry – Necessity – When will Court not allow interrogatories?

In the divorce action filed, the defendant husband by a motion tendered twenty interrogatories to be served on the plaintiff wife. The plaintiff in her statement of objections set out the grounds on which the plaintiff refused to answer the interrogatories. The defendant objected to the application made by the plaintiff – the Court without holding an inquiry refused to accept the objections.

On leave being granted.

Held:

- (1) When the plaintiff-petitioner has filed a statement of objections supported by an affidavit, the Court should in order to satisfy itself of the merits of the refusal inquire into the said refusal to answer the interrogatories. It is only after an inquiry that the Court could form an opinion as to the merits of the objection?

Per Wimalachandra, J.

"Interrogatories must be relevant to the matters in issue and never allowed to test the credibility of a party or witness as the credibility of a witness could be tested in cross-examination. Interrogatories which are insulting or impertinent to the matter in issue should not be allowed – are not allowed if they put an undue burden on the party interrogated and shall not be put in the hope of discovering facts to make out a case".

- (2) Even a person who omits to answer interrogatories is entitled to be heard in opposition as to why he failed or refused to answer interrogatories.

- (3) The Court has failed to observe that in terms of Section 98, a party who was called upon to answer interrogatories may refuse to answer any interrogatory on the ground that it is scandalous or irrelevant or is not put *bona fide* for the purpose of the action. The *proviso* to Section 100 of the Code provides that Court shall not require an answer to an interrogatory which in its opinion need not have answered under Section 98.

APPLICATION for leave to appeal from an order of the District Court of Negombo with leave being granted.

Cases referred to:

1. *Goonewardane v Dunuwilla* 46 NLR 565.
2. *Ramsamy v Ramsamy* 1956 1 WLR 542.
3. *Kennedy v Dodson* 1895 1 Ch 334.
4. *Ceylon Insurance Company Ltd. v R.M. Sudu Banda* 70 NLR 261.

Hiran Jayasuriya with *Kaushalya Nawaratne* for plaintiff-petitioner.

Kuwera de Zoysa with *Senaka de Saram* for 1st defendant-respondent.
Cur.adv.vult.

March 9,2007

WIMALACHANDRA, J

The plaintiff-petitioner (plaintiff) has filed this application for leave to appeal from the order of the learned Additional District Judge of Negombo dated 26.2.2004. The Court of Appeal granted leave to appeal on 24.03.2005. Briefly the facts relevant to this appeal are as follows:

The plaintiff instituted the above mentioned action bearing No. 5307/D, in the District Court of Negombo against the defendant for a judgment and decree of divorce dissolving the marriage between the plaintiff and the defendant on the ground of constructive malicious desertion and/or on the ground of adultery of the 1st defendant-respondent (1st defendant) with the 2nd defendant-respondent (2nd defendant), physical and legal custody of the children born from the said marriage and a permanent injunction restraining the 1st defendant or his agents and /or his servants from removing the children from the custody of the plaintiff or taking the children out of Sri Lanka without the permission of Court. The plaintiff also sought Rs. 2,000,000/- as permanent alimony and Rs. 20,000/- per month for the maintenance of the children. Upon the answers of the defendants being filed, the Court fixed the

matter for trial on 21.1.2004. The 1st defendant by motion dated 19.1.2004 tendered twenty interrogatories to be served on the plaintiff. The said interrogatories were served on the plaintiff on 21.1.2004 and the Court directed the case to be called on 26.2.2004. On that day the plaintiff tendered to Court a statement of objections supported by an affidavit setting out the grounds on which the plaintiff refuses to answer the said interrogatories in terms of Section 98 of the Civil Procedure Code. The 1st defendant objected to the application made by the plaintiff in terms of Section 98 of the Civil Procedure Code. Subsequently, the parties made submissions and the Court made order on 26.2.2001 refusing to accept the objections filed by the plaintiff under Section 98 of the Civil Procedure Code.

The plaintiff is entitled to refuse to answer the interrogatories if the party interrogating seeks by his interrogatories to get matters irrelevant to prove his case. In *Goonewardena v Dunuwila*⁽¹⁾ it was held that the Court will not allow interrogatories which are;

- 1) too wide
- 2) remotely connected with the issues in the case.
- 3) merely bear upon the credit of a witness or the opposite party.
- 4) scandalous, vexatious or oppressive.

Section 98 of the Civil Procedure Code provides that a party called to answer any interrogatory, may refuse to answer such interrogatory on the ground that it is scandalous or irrelevant or is not put *bona fide* for the purposes of the action or that the answer will tend to incriminate himself or that the matter inquired after is not sufficiently material at that stage, or any other like ground.

In the instant case, upon the interrogatories being served on the plaintiff, she filed a statement of objections to the interrogatories supported by an affidavit on the ground that the said interrogatories are irrelevant, vexatious, and are remotely connected with the issues in the case.

When the plaintiff has filed a statement of objections supported by an affidavit, the Court should in order to satisfy itself of the merits of the refusal, inquire into the said refusal to answer the interrogatories. It is only after an inquiry that the Court could form an opinion as to the merits of the objections. In my view it is only

after such inquiry the Court could take steps under Section 100 of the Civil Procedure Code. Section 100 of the Civil Procedure Code states thus:

"If any person interrogated omits or refuses to answer or answer insufficiently any interrogatory, 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 further, either by an affidavit or by *viva voce* examination, as the court may direct: Provided that the court shall not require an answer to an interrogatory which in its opinion need not have been answered under Section 98."

Thus, it will be seen that the Court after examining the affidavit and the objections to the answering any one or more or all of interrogatories may make an order either accepting the objections or may make an order requiring the party interrogated to answer the interrogatories either by affidavit or oral examination.

The interrogatories must be relevant to the matters in issue. Interrogatories are never allowed to test the credibility of a party or witnesses as the credibility of a witness could be tested in cross-examination. Interrogatories which are insulting or impertinent to the matter in issue should not be allowed. Interrogatories are not allowed if they put an undue burden on the party interrogated. The interrogatories shall not be put in the hope of discovering facts to make out a case.

Similarly, a party can refuse to answer all the interrogatories if they are scandalous or irrelevant or is not *bona fide* for the purpose of the action or any other like ground in terms of Section 98 of the Civil Procedure Code.

The Court has a wide discretion as to interrogatories, and only such interrogatories will be allowed as the Court considers necessary either for disposing fairly of the cause or matter or for saving costs. (*Ramsey v Ramsey*)⁽²⁾.

It is well to remember the well-known observations made by A.L. Smith L.J., in *Kennedy v Dodson*.⁽³⁾

"In my opinion, the legitimate use, and only legitimate

use, if interrogatories is to obtain from the party interrogated admissions of facts which it is necessary for the party interrogating to prove in order to establish his case; if the party interrogating goes further and seeks from the other party matters which is not incumbent on him to prove, although such matters may indirectly assist him, the interrogatories ought not to be admitted."

In the instant case the Court made an order refusing the objections and the affidavit filed by the plaintiff, without holding an inquiry into the merits of the objections filed by the plaintiff and ordered the plaintiff to answer the said interrogatories. The learned Judge has failed to consider the grounds upon which the plaintiff had refused to answer the said interrogatories. The Court cannot simply reject the objections filed by the plaintiff without giving reasons for such rejection. The plaintiff in his objections supported by an affidavit has stated the grounds for refusing to answer the interrogatories, such as the said interrogatories were scandalous, irrelevant, and were relating to matters not within the knowledge of the plaintiff. It is only upon an inquiry that the Court could form an 'opinion' as to the merits of the objections. It is only thereafter the Court could take steps under Section 100 of the Civil Procedure Code.

In the case of *Ceylon Insurance Company Ltd. v R.M. Sudu Banda*⁽⁴⁾, it was held *inter alia* that, a party who omits to answer interrogatories served on him is entitled to be heard before the Court makes an order requiring him to answer under Section 100 of the Civil Procedure Code. The party sought to be interrogated should therefore have notice of the application under Section 100, so that he may show cause, if any, against an adverse order being made against him.

It appears that even a person who omits to answer interrogatories is entitled to be heard in opposition as to why he failed or refused to answer interrogatories. In the instant case the plaintiff has stated in her objections supported by an affidavit as to why she refused to answer the interrogatories. However the learned Judge has not given an opportunity to the plaintiff to be heard in opposition and had inquired into the said objections before making an order under Section 100 of the Civil Procedure Code. The plaintiff had stated in her statement of objections and in the affidavit that the interrogatories were not relevant to the matters in dispute, unreasonable, vexatious and lengthy and

tedious (prolix). The learned Judge, without holding an inquiry, had simply rejected. The Court has not considered the grounds of objections urged by the plaintiff in her affidavit and in the statement of objections. Before the Court rejects the plaintiff's objections and the affidavit it is the duty of the Court to give a hearing to the plaintiff.

The learned Judge had failed to observe that in terms of Section 98 of the Civil Procedure Code, a party who was called upon to answer interrogatories may refuse to answer any interrogatory on the ground that it is scandalous or irrelevant or is not put *bona fide* for the purpose of the action. Moreover the proviso to Section 100 of the Civil Procedure Code provides that the Court shall not require an answer to an interrogatory which in its opinion need not have been answered under Section 98 of the Civil Procedure Code.

In these circumstances, I am of the firm view that the learned Judge erred in law when she refused to accept the statement of objections and the affidavit of the plaintiff without an inquiry into the merits of the objections and ordered the plaintiff to answer the said interrogatories. Had an inquiry been held by the Judge, the plaintiff would have explained the reasons for the refusal to answer the said interrogatories. It is only upon an inquiry the Court could form an opinion as to the merits of the objections and it is only thereafter the Court can take steps under Section 100 of the Civil Procedure Code. In my opinion, it is not proper for the learned Judge to dismiss the plaintiff's affidavit and the statement of objections in refusing to answer the interrogatories without even considering whether the interrogatories are relevant to the matter in issue in this action or these interrogatories are such that answers to them be relevant to the issue. In my view, unless the interrogatories are strictly relevant to the question at issue in the action, they ought to be excluded.

For these reasons I set aside the order of the Additional District Judge dated 26.2.2004 and I order the Additional District Judge to accept the statement of objections and the affidavit filed by the plaintiff on 26.2.2004 and thereafter to hold an inquiry in respect of the same according to law. Appeal is allowed with costs fixed at Rs. 10,000/-

Appeal allowed.

District Court directed to hold inquiry.