
**THE FINANCE CO. LTD
VS
SRIYANI**

COURT OF APPEAL.
WIMALACHANDRA J.
CALA 282/2004.
DC HAMBANTOTA 2908/M (LG).
AUGUST 15, 2005.
SEPTEMBER 12, 2005.

Civil Procedure Code, section 100-Interrogatories-Answer to an interrogatory cannot be vague-Courts power to direct a party to answer interrogatories.

In the instant case filed under summary procedure to recover a certain sum on a cheque, the interrogatory raised by the defendant, according to him was answered vaguely by the plaintiff. In the circumstances, he moved for an order requiring the plaintiff to answer further. The Court disallowed the application.

HELD:

- (1) Under section 100 of the Code where a person served with an interrogatory omits or refuses to answer or answers it insufficiently, the party interrogating can apply to the Court for an order requiring such other party to answer further. The Court has the power to direct him by order, to answer the interrogatory or to answer it further, either by an affidavit or by *viva voce* examination.
- (2) The question for the Court is whether the answer is sufficient or insufficient and not the correctness of the answer at this stage, if the answer is insufficient a further answer is necessary.

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

I. S. de Silva with Priyantha Alagiyawanna for defendant - petitioner.

S. Daluwatta for plaintiff - respondent.

March 17, 2006

WIMALACHANDRA, J.

This is an application for leave to appeal filed by the defendant-petitioner (defendant) from the order of the learned district judge of Hambantota dated 19.07.2004. By that order the learned Judge held that the plaintiff-respondent (plaintiff) has sufficiently answered the interrogatories delivered by the defendant and the plaintiff need not answer them any further. Briefly, the facts are as follows :

The plaintiff instituted action by way of summary procedure against the defendant and its Sales Manager of its Ambalangoda Branch claiming a sum of Rs. 450,000 on a cheque. The plaintiff claimed the said cheque was issued to her being the refund of a certificate of deposit which she had placed with the defendant. The defendant in his amended answer and as well as in the original answer took up the position that the said certificate of deposit on which the said cheque was issued was obtained by the plaintiff by a fraud perpetrated on the defendant by the plaintiff with one of the defendant's former employees, named H. K. Nishantha and in fact there were no monies deposited by the plaintiff with the defendant. The defendant sought permission of Court to serve interrogatories on the plaintiff and the Court made order to serve the same on the plaintiff's Attorney-at-Law. Thereafter the plaintiff filed an affidavit answering the said interrogatories. Subsequently, the defendant sought time to take steps to obtain a peremptory order from Court to compel the plaintiff to answer or further answer the said interrogatories on the ground that the plaintiff had given evasive answers to some of the interrogatories and in particularly as the interrogatory No. 5 had not been answered sufficiently. The Court made order that the plaintiff had sufficiently answered the interrogatories and she need not answer any further. It is against this order the plaintiff had filed this application for leave to appeal.

When this matter was taken up for inquiry before this Court, both parties agreed that if the Court granted leave, the appeal also be decided on the same submissions.

The learned counsel for the defendant submitted that the Court, without granting time for the defendant to file papers for a peremptory order, proceeded to make order that the plaintiff had sufficiently answered the interrogatories and she need not answer any further. By interrogatory No. 5 (a) the defendant has asked the following question.

Interrogatory No. 5 (a) - If there was a deposit prior to the deposit of Rs. 450,000, how did you receive that money ?

The plaintiff's answer reads thus :

"මෙම මුදල ද මෙම ආයතනයේ තැන්පත් කළ මුදලක අලුත් කිරීමකි."

(The amount is a renewal of the amount deposited with the Company.)

It is the position of the defendant that the plaintiff never deposited any money with the defendant and had obtained the fixed deposit certificate fraudulently by acting in connivance with a former employee of the defendant-company, namely H. K. Nishantha.

The learned counsel for the defendant contended that the answer to interrogatory No. 5(a) is vague and a clear answer to it is very vital to the defendant's case, as the defendant has taken up the position that no monies had been deposited by the plaintiff with the defendant, and that the plaintiff without stating how she had received the money to make a deposit, had merely stated that it was a renewal.

Under section 100 of the Civil Procedure Code, where a person served with an interrogatory omits or refuses to answer it, or answers

it insufficiently, the party interrogating can apply to the Court for an order requiring such other party to answer further. The Court has the power to direct him, by order, to answer the interrogatory or to answer it further, either by an affidavit or by *viva voce* examination.

It is to be observed that at no stage had the plaintiff taken up the position that the interrogatory No. 5(a) is irrelevant, scandalous or *mala fide*. It appears that she had merely given an evasive answer. The plaintiff without stating how she had received the money to make a deposit, merely stated that it was a renewal of a previous deposit. She had not given the particulars of the previous deposit if it was a renewal of a deposit.

The question for the Court is whether the answer is sufficient or insufficient and not the correctness of the answer at this stage. If the answer is insufficient a further answer is necessary. In the instant case, a clear answer to the interrogatory No. 5(a) is relevant to the defendant, so as to enable him to prepare for the case, he has to meet. The defendant is entitled to ascertain from the plaintiff how she had received a large amount of money and if it was from a renewal of a deposit as stated by the plaintiff, the defendant is entitled to know the particulars of the deposit.

In the circumstances, I am of the view that the learned judge erred in law when he prevented the defendant from obtaining a complete answer to the interrogatory No. 5(a) so as to enable him to prepare for the case he has to meet. More so, when the defendant has brought to the notice of Court that the plaintiff was a party to a fraud committed against the defendant-company along with former employee of the defendant-company, namely, H. K. Nishantha and which fraud is the

subject matter of the proceedings in the High Court Case Nos. 56/2004(A) and (B) in the Provincial High Court of Hambantota.

For these reasons, leave to appeal is granted and I set aside the aforesaid order of the learned District Judge dated 19.07.2004 and direct the learned Judge to order the plaintiff to answer further, the aforesaid interrogatory No. 5(a), either by affidavit or by *viva voce*, as the Court may direct. Accordingly, the appeal is allowed with costs fixed at Rs. 5250.

Appeal allowed.