

MHAU130000712017



**ORDER BELOW EXH.23 IN SPL.C.S.NO.04OF 2017**  
**(Ajintha Vs. MCA)**

1. Plaintiff has filed this application for review of order dated 29.01.2020 passed below Exh. No.21.
2. Plaintiff has submitted that he had filed application under Order XI Rule 1 of C.P.C. for leave to deliver interrogatories at Exh. No.21. This Court had rejected the same on 29.01.2020. Plaintiff has submitted that he is filing application for review as there is error apparent on the face of record.
3. Plaintiff has submitted that he has challenged legality of imposition of tax. Plaintiff has contended that municipal corporation has not followed due procedure while imposition of tax. Hence, plaintiff had made application for delivery of interrogatories to defendant to seek their admission in respect of it and also to direct them to produce relevant documents in that respect.
4. Plaintiff has submitted that this Court has rejected said application on the ground that there is another possible view i.e. filing appeal under Section 406 of M.M.C. Act. It amounts an error on the face of record. Hence, plaintiff has prayed that this review application be allowed and he be permitted to deliver interrogatories.
5. Defendant has submitted that suitable order be passed.

6. I heard Ld. counsel for the parties. Ld. counsel for plaintiff has relied on following case laws:

1) Ramlalsao Vs. Tansingh Lalsingh [AIR 1952 Nagpur 135]

This case law is not applicable to facts of the present case.

2) Jamaitrai Bishansarup Vs. Rai Bahadur Motilal Chamari Vs. [AIR 1960 Calcutta 536] :-

In this case it is held by Hon'ble Calcutta High Court that,

"Interrogatories may not extend to the evidence wherewith the opposite party intends to support his case at the trial, or to the contents of the opponent's brief or to the names of his witnesses or to the facts which merely support the case of the party interrogated."

This case law is applicable to the facts of the present case, but it is supporting the case of defendant that plaintiff can not deliver interrogatories in respect of matters which is the evidence of defendant.

3) Sonai Senroy Vs. Amit Senroy [AIR 1998 Bombay 302]

This case law is not applicable to facts of the present case.

4) P. Balan Vs. Central Bank of India [AIR 2000 Kerala 24]

This case law is not applicable to facts of the present case.

5) Manohar Lal Vs. L.Rs. of Govin [AIR 2010 Rajasthan 72]

This case law is not applicable to facts of the present case.

6) Shrivallabh s/o. Dongardasji Sikchi Vs. Ibrahimkhan s/o. Ahmadkhan and another [2015(6) Bom.C.R. 525]

In this case it is held by Hon'ble Bombay High Court that,

"The provisions of Order XI Rule 1 of the Code confer necessary discretion with the Court to grant leave for delivery

of interrogatories. Thus, it is clear that while interrogatories should relate to a question or issue in dispute, the object of said provision is not to enable the applicant to know as to how his opponent is going to prove his case. It is, therefore, obvious that while considering an application seeking leave of the Court to deliver interrogatories under provisions of Order XI Rule 1 of the Code, aforesaid aspects will have to be taken into account by the Court."

This case law is applicable to the facts of the present case, but it is supporting the case of defendant that plaintiff can not deliver interrogatories in respect of matters which is the evidence of defendant.

7) M/s. Kishorilal Babulal Vs. Ramlal Ganeshprasad Tiwari and Ors [AIR 2014 Bombay 19]

This case law is not applicable to facts of the present case.

8) Union of India Vs. Ibrahim Uddin & Anr. [2012(5) ALL MR 462 (S.C.)]

This case law is not applicable to facts of the present case.

7. I perused this application and say submitted. I perused record of this case. I perused interrogatories filed alongwith Exh. No.21. In the present case, plaintiff has submitted that he has filed interrogatories regarding procedure to be followed by Municipal Corporation for imposition of tax. Plaintiff is also seeking production of documents in respect of imposition of tax. Interrogatories are also filed on question of law.

8. I perused order passed by my predecessor below Exh.No.21. Said application was rejected on the ground that plaintiff is trying to

collect evidence through the process of Court. My predecessor has observed that burden of proof is on plaintiff to prove his case. Hence, this application for interrogatories is not maintainable. It is held by Hon'ble Delhi High Court in the case M/s. A.F.L. Developers Pvt. Ltd. Vs. Smt. Veena Trivedi [AIR 2000 Delhi 354],

"Reference in this regards can be made from Supreme Court decision in Raj Narayan Vs. Indira Gandhi [AIR 1972 S.C. 1302], Where it was observed :-

"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 irrelevant. Party not entitled, to administer interrogatories for obtaining discovery of facts which constituted exclusively evidence of adversary's case or title. It is held by Division Bench of Hon'ble Bombay High Court in the case of Nishi Prem Vs. Javed Akhtar and others [AIR 1988 Bombay 222], "It is well settled that the parties are not entitled to administer interrogatories for obtaining discoveries of facts which constitutes evidence of its adversary's case or title.

This case law is applicable to facts of the present case.

9. In the present case, plaintiff is seeking interrogatories on the point which is the evidence of municipal corporation. This case is pending for evidence since 24.04.2019. Plaintiff has failed to adduce evidence since that time till date. Conduct of plaintiff shows that it is

deliberately prolong this suit just to avoid payment of property tax. There is no error apparent on the face on record.

10. If plaintiff is aggrieved by the order of my predecessor. He ought to have challenged said order before the Hon'ble Appellate Court. Review is not an appeal in disguise. Points which are relevant in appeal are not relevant while deciding review application. I consider that plaintiff has failed to make out sufficient ground for review of order of my predecessor at Exh.21. Hence, I pass this order.

**ORDER**

This application is hereby rejected with costs.

Date : 07.01.2022

(Smt. S. N. Morwale)  
Civil Judge (Senior Division)  
(MCA Court) Aurangabad.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer : Varsha Ajit Andurkar.  
Court : C.J.S.D. (Corporation Court), Aurangabad  
Date : 05.01.2022  
Order signed by the  
presiding officer on : 05.01.2022  
Order uploaded on : 05.01.2022