

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA (OS) No. 44/2001

Reserved on: 7th February, 2008

Date of Decision: 14th February, 2008

KULBHUSHAN SETH Appellant
Through Mr. Ajay Vir Singh, Advocate.

versus

SEEMA SETH & ORS. Respondent
Through Mr. R.K. Singh and Ms. Deepa Rai, Advocates.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

% **JUDGMENT**
14-02-2008

MUKUL MUDGAL, J.

1. This is an appeal against the order dated 7th April, 2000. The
impugned judgment noted that on 19th January, 2000, the defendant was directed to

file affidavit showing his total gross amount of salary in the year 1999 which was not done and at the request of the defendant/appellant two weeks' further time was given on 14th February, 2000. This order was also not complied with and on 19th March, 2000, a notice was given to the appellant to show cause as to why his defence should not be struck off. The appellant was also required to be present in person before the learned Single Judge. The defendant/appellant neither filed affidavit nor showed any cause nor remained present on 7th April, 2000. By the said order the learned Single Judge has construed this conduct to show lack of bona fide and in our view rightly so. On account of the aforesaid conduct of the appellant, the defence of the appellant was struck off and the statement of the plaintiff/respondent was recorded separately.

2. From the averments made in the plaint and the statement made by the respondent/plaintiff, the learned Single Judge concluded as follows:-

- (a) The respondent Nos. 1 & 2/ original plaintiff No. 1 and 2 were wife and minor daughter of the appellant/defendant.
- (b) Both the respondents had no means, income or property for their maintenance.

(c) The salary of the defendant/appellant during the year 1997-98 was Rs.4,21,120/- as per the income tax return.

(d) The salary of the defendant/appellant would be beyond Rs.45,000/- P.M.

(e) There were substantial savings in appellant's Provident Fund, LIC and NSC as demonstrated by the Income Tax Returns.

3. After taking into account the status of the appellant with monthly income and also the fact that he has no other dependent, granted Rs.10,000/- per month for respondent No. 1 and Rs.5,000/- per month for respondent No. 2 – who is the minor daughter, as reasonable maintenance. Accordingly, a decree of Rs.15,000/- was passed in favour of the respondents.

4. The learned counsel for the appellant has challenged the above judgment of the ground that the learned Single Judge was duty bound inspite of striking off the defence, to look at the written statement of the appellant/defendant which contradicted the evidence recorded by the learned Single Judge. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **Modula India vs. Kamakshya Singh Deo**, (1988) 4 SCC 619. The learned counsel for the appellant submitted that the above judgment postulated that even if the defence is

struck off, the written statement ought to be considered before passing any judgment. The relevant paragraph of the said judgment reads as follows:-

“24. For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under Section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

(A) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.”

(emphasis supplied)

5. A perusal of the above judgment of the Hon'ble Supreme Court makes it clear that the right of the defendant in such a situation is to cross-examine the plaintiff's witnesses and to address arguments on the basis of the plaintiff's case. It

has also been held that in no circumstances the cross-examination can be permitted to travel beyond the legitimate scope and to convert itself virtually to a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses. In our view, this itself shows that the judgment of the Hon'ble Supreme Court does not support the plea advanced by the learned counsel for the appellant and on the contrary supports the stand of the respondent that the appellant's written statement cannot be taken in account. Accordingly, there is no merit in the appeal.

6. The appeal is thus dismissed and stands disposed of in the above terms.

(MUKUL MUDGAL)
JUDGE

February 14, 2008
kkb

(S.L. BHAYANA)
JUDGE