



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE JAYANT BANERJI

WRIT PETITION NO.5845 OF 2026 (GM-CPC)

BETWEEN:

SRI A.S.SWAMY,
S/O L.SHIVANNA,
AGED ABOUT 64 YEARS,
R/AT ABBUR VILLAGE,
KASABA HOBLI,
CHANNAPATNA TALUK-571 501,
RAMANAGAR DISTRICT

...PETITIONER

(BY SRI A.S.MAHESHA, ADVOCATE)

AND:

DYAVARASE GOWDA,
S/O DYAVE GOWDA,
MAJOR
R/AT ABBUR VILLAGE,
KASABA HOBLI,
CHANNAPATNA TALUK-571 501,
RAMANAGAR DISTRICT.

...RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 23.01.2026 (ANNEXURE-F) IN O.S.NO.294/2025 ON IA NO.4 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE & JMFC CHANNAPATNA.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI

Digitally
signed by
KAVYA G

Location:
High Court
of Karnataka



ORAL ORDER

Heard learned Counsel for the petitioner.

2. This petition is filed seeking the following reliefs:
 - (i) Issue a writ of certiorari or other appropriate writ or order quashing the Order dated 23.01.2026 in O.S.No.294/2025 on I.A.No.4 on the file of Additional Civil Judge & JMFC, Channapatna vide Annexure-'F'.
 - (ii) Issue any other writ or order or direction that this Hon'ble Court deems fit to grant in the circumstances of the case, in the interest of justice and equity.

3. It is evident from the record that summon was issued on 12.08.2025 to the petitioner-defendant which was received by him on 16.09.2025. The date of receipt of the summons is not denied by learned Counsel for the petitioner.

4. I.A.No.4 filed by the petitioner under Order VIII Rule 1 of CPC read with Section 151 of CPC seeking permission to file written statement by the defendant has been rejected by the trial Court relying upon the 2025 Karnataka Amendment



brought about in Order VIII Rule 1 of CPC. Admittedly, the fixed period of 180 days, after which the defendant would forfeit his right to file a written statement, expired well before 23.01.2026. Therefore, the order of the trial Court in rejecting I.A.No.4 by means of the impugned order of 23.01.2026 cannot be faulted.

5. The contention of learned Counsel for the petitioner is that the date fixed for appearance in the summons was 03.10.2025 which day fell during the Dasara vacations. It is stated that on the opening day that is on 08.10.2025, behind the back of the petitioner/defendant, the case was called out and noting the absence of the defendant, he was placed ex-parte. It is stated that thereafter, by means of the impugned order dated 23.01.2026, despite allowing the application I.A.No.3 filed by the petitioner seeking to set aside the order placing the petitioner ex-parte, I.A.No.4 seeking the leave of the Court to take on record the written statement was rejected.

6. The contention is that once the order placing the petitioner ex-parte was set aside, the written statement ought



to have been accepted. In my considered opinion, the submission of the learned Counsel for the petitioner is not correct. The right of the petitioner to cross examine the witnesses and to make his arguments is preserved particularly so in view of the judgment of the Supreme Court in **Modula India v. Kamakshya Singh Deo**¹ subject to certain safeguards.

The relevant extracts of the judgment in the case of **Modula India** are quoted below:

"19. To us it appears that the basic principle that where a plaintiff comes to the court he must prove his case should not be whittled down even in a case where no defendant appears. It will at once be clear that to say that the court can only do this by looking at the plaintiff's evidence and pleadings supplemented by such questions as the court may consider necessary and to completely eliminate any type of assistance from the defendant in this task will place the court under a great handicap in discovering the truth or otherwise of the plaintiff's statements. For after all, the court on its own motion, can do very little to ascertain the truth or otherwise of the plaintiff's averments and it is only the opposite party that will be more familiar with the detailed facts of a particular case and that can assist the court in pointing out defects, weaknesses, errors and inconsistencies of the plaintiff's case.

20. We, therefore, think that the defendant should be allowed his right of cross-examination and arguments. But we are equally clear that this right should be subject to certain important safeguards. The first of these, is that the defendant cannot be allowed to lead his own evidence. None of the observations or decisions cited have gone to the extent of suggesting that, in spite of the fact that the defence has been struck off, the defendant can adduce evidence of his own or try to substantiate his own case.

¹ (1988) 4 SCC 619



21. Secondly, there is force in the apprehension that if one permits cross-examination of the plaintiff's witnesses by the defendant whose defence is struck off, procedural chaos may result unless great care is exercised and that it may be very difficult to keep the cross-examination within the limits of the principles discussed earlier. Under the guise of cross-examination and purported demolition of the plaintiff's case, the defendant may attempt to put forward pleas of his own. To perceive quickly the difference between questions put out to elicit a reply from the plaintiff which may derogate from his own case and questions put out to substantiate pleas in defence which the defendant may have in mind and to restrict the cross-examination to its limits will be not an easy task. We think, however, that this is a difficulty of procedure, rather than substance. As pointed out by Ramendra Mohan Dutta, J. this is a matter to be sorted out in practical application rather than by laying down a hard and fast rule of exclusion.

22. A third safeguard which we would like to impose is based on the observations of this Court in Sangram Singh case [AIR 1955 SC 425 : (1955) 2 SCR 1 : 10 ELR 293] . As pointed out therein, the essence of the matter in all such cases is that the latitude that may be extended by the court to the defendant in spite of his having filed a written statement, should not cause prejudice to the plaintiff. Where the defendant does not file a written statement or where he does not appear to contest the case the plaintiff proceeds on the basis that there is no real opposition and contents himself by letting in just enough evidence to establish a prima facie case. Therefore, the court should ensure that by permitting the defendant at a later stage either to cross-examine the witnesses or to participate in the proceeding the plaintiff is not taken by surprise or gravely prejudiced. This difficulty however can be easily overcome in practice, because there is a wide discretion with the court and it is always open to the court, where it believes that the plaintiff has been misled, to exercise its discretion to shut out cross-examination or to regulate it in such manner as to avoid any real prejudice to the interests of the plaintiff.



24. For the above reasons, we agree with the view of Ramendra Mohan Datta, Acting C.J., 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 the 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."

7. Therefore, the order of the trial Court allowing I.A.No.3 inures to the benefit of the petitioner/defendant. However, as far as I.A. No.4 is concerned, the provision of the third *proviso* to Order VIII Rule 1 of CPC inserted by the Karnataka Amendment of 2025, the same has to be strictly implemented as the terms therein are mandatory in nature.

8. For the reasons aforesaid, this Court does not find any merit in the petition of the petitioner which is, accordingly, dismissed.



The Registry of this Court is directed to communicate this order to the concerned trial Court within fifteen days from today so that it is kept on the record.

Sd/-
(JAYANT BANERJI)
JUDGE

KSR
List No.: 1 Sl No.: 17