

*** HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**+ Civil Revision Petition Nos. 1889, 1987, 2023, 2024, 2025, 2038,
2048 and 2099 of 2016**

% Dated 27.07.2016

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CRP No. 1889 OF 2016

**# SRR Hospitalities Pvt. Ltd.,
Rep. by its Director Cherukuru Srikanth.**

...Petitioner

Vs.

\$ Balina Srimannarayana.

...Respondent

! Counsel for the Petitioner: Sri Y.V. Anil Kumar

^ Counsel for the Respondent: Sri M.V.S. Suresh Kumar

< Gist :

> Head Note:

? Cases Referred:

1. (1998) 4 SCC 619
2. 2005(6) ALT 712
3. (2003) 6 SCC 675
4. (2010) 8 SCC 329
5. (2015) 5 SCC 423
6. (2010) 9 SCC 385

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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Civil Revision Petition Nos. 1889, 1987, 2023, 2024, 2025, 2038,

2048 and 2099 of 2016

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CRP No.1889 of 2016

SRR Hospitalities Pvt. Ltd.,
Rep. by its Director Cherukuru Srikanth.

...Petitioner

Vs.

Balina Srimannarayana.

...Respondent

ORDER PRONOUNCED ON : 27.07.2016

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : YES
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : YES
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : YES
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

**Civil Revision Petition Nos. 1889, 1987, 2023, 2024, 2025, 2038,
2048 and 2099 of 2016**

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Common Order:

All these Civil Revision Petitions are being disposed of by this common order as they arise out of the same Original Suit which is pending between the parties.

2. The petitioner herein is the defendant in OS No.173 of 2013 on the file of the VII Additional District Judge-cum-Family Court, Ongole. The suit was filed by the respondent herein for recovery of an amount of Rs.2,05,11,560/- with subsequent interest at 36% pa., seeking vacation of the defendant from plaint 'A' schedule property and hand

over vacant possession of the same.

3. The suit was filed alleging that the suit schedule property of an extent of 2020 sq. meters located in Survey Nos.11/1, 11/2, 10/2A and 10/2B in RTC Bus Stand premises in Ongole Town within the Municipal Corporation Limits of Ongole belongs to APSRTC. The APSRTC advertised inviting bids for developing the said property in the month of October 2005 and the plaintiff was the only successful bidder. After accepting the bid, a development agreement was entered for development, construction, operation and management on 02.05.2006. As per the said development agreement, the plaintiff is entitled to sub-lease the built up space to any third party during the license period of 30 years commencing from 02.05.2006. The plaintiff constructed a multi-storied commercial complex under the name and style of "Jyothi Plaza" and the defendant approached the plaintiff for utilization of an extent of 41,764.88 sq. feet of built up area situated in Shop Nos.26, 31 and 37 in ground floor and balance extent in first floor, second floor and third floor as described in plaint 'B' schedule. A lease and license agreement was entered between the plaintiff and the defendant for carrying on hotel and hospitality services on 09.02.2009. The license is for a period of 10 years commencing from 01.04.2009. In pursuance of the said licence, the property was delivered to the defendant. It was alleged that though the defendant commenced its business, it failed in payment of license fee regularly as per the terms of the agreement. One of the terms of the license stipulates that in case of default, the penal interest at 36% per month on the over due license fee (rent) shall be paid and in case of continuous default for a period of three months the license stands cancelled. The defendant committed default and the amounts paid by the defendant were adjusted till 01.11.2010. The plaintiff got issued a notice through his counsel to the defendant on 23.08.2011 and 10.11.2011 and after receipt of the notices, it paid one month rent. Though the defendant

committed default in payment of rent for a continuous period of three months, he allowed the defendant to continue in possession at its request. Though the plaintiff referred the dispute to an Arbitrator through a letter on 18.10.2012 requesting him to act as an Arbitrator between the plaintiff and the defendant and the Arbitrator though expressed his consent on 20.10.2012, the defendant did not accept. There were exchange of notices between the plaintiff and the defendant, which ultimately lead to the filing of the above suit.

4. A detailed written statement was filed by the defendant denying the plaint averments. It was specifically averred that the plaintiff chose the Arbitrator by himself without there being any agreement as such for adjudication of the dispute by the Arbitrator, there is no dispute with regard to terms of the agreement but the dispute relates to the claims and rights on the property and hence the Arbitrator cannot enter on reference. It was further stated that the plaintiff made illegal and unauthorized construction of fourth and fifth floors contrary to the sanctioned plan of Ongole Municipal Corporation. There are no basic amenities like water and drainage and the plaintiff did not provide proper approach for the building. In fact the Municipal Corporation had partly demolished the unauthorized construction of fourth and fifth floors and the debris and construction material was left in the third floor which resulted in storage of rain water creating health hazard. The plaintiff had let out to the food courts contrary to the agreement and did not provide approach. The plaintiff also did not provide lifts so far and the other averments of the plaint are denied.

5. When the plaintiff filed IA No.1411 of 2013 in OS No.173 of 2013 seeking a direction to the defendant to pay arrears of rent, the said application was allowed on 02.04.2015 directing the defendant to pay arrears of rent at the rate of Rs.5,85,000/- from 01.12.2010 to 31.03.2012 and at the rate of Rs.7,02,000/- from 01.04.2012 to 31.03.2015 without interest. When CRP No.2472 of 2015 was filed

challenging the said order it was dismissed on 18.09.2015, against which the defendant preferred SLP No.28746 of 2015 and the same was disposed of on 16.10.2015 by the Hon'ble Supreme Court. Before the Hon'ble Supreme Court, the defendant admitted the arrears of rent and sought for four months time to deposit the arrears and agreed for striking off the defence in case of failure and accordingly the period for payment of arrears of rent was extended by four months from 16.10.2015 subject to the condition that if arrears are not paid within the said time, the defence of the petitioner shall be deemed to have been struck off. As a matter of fact, the arrears were not deposited within the said time, but he filed the following applications.

Sl. No.	Date of filing application	Details of Interlocutory Application	Date of dismissal	CRP Number
1.	14.03.2016	C F R No.746 of 2016 filed u/s.8(2) of Arbitration Act for referring the matter to Arbitrator	28.03.2016	1889 of 2016
2.	07.10.2015	I A No.1169 of 2015 filed for clubbing of suits OS No.173 of 2013 and 284 of 2014	28.03.2016	1987 of 2016
3.	15.02.2015	CFR No.722 of 2016 seeking permission to pay proportionate rent	28.03.2016	2023 of 2016
4.	15.02.2016	C F R No.723 of 2016 for deposit of Rs.32.14 lakhs	28.03.2016	2024 of 2016
5.	12.03.2014	IA No.410 of 2014 for rejection of plaint since the suit document is unstamped and unregistered and barred by law	28.03.2016	2025 of 2016
6.	15.02.2016	CFR 697 of 2016 to permit the petitioner to implead the APSRTC and Commissioner, Ongole Municipal Corporation as party defendants.	28.03.2016	2038 of 2016
7.	07.10.2015	I A No.1167 of 2015 for filing additional written statement	28.03.2016	2048 of 2016
8.	12.10.2015	IA No.1241 of 2015 to view the video recorded in the public court	28.03.2016	2099 of 2016

6. The said applications were dismissed by the learned District Judge with docket orders in the respective applications. The

observations made by the learned District Judge in one of such applications are as follows.

“Ordinarily and generally, invoking the provisions of Arbitration Act in respect of the disputes concerning the parties would be undertaken in the absence of any direction from any Court of Higher Forum. But, when once the Hon’ble Supreme Court has passed an order confirming the order of this Court under Order 15-A by granting time to comply with the order passed by this Court and when the same was not complied with and when an order was passed in IA No.1134 of 2015 by striking off the defence of the petitioner, the petitioner in the CFR cannot agitate by coming up with this application to refer the parties to the arbitrator because it would result into modifying/displacing the said order of the Hon’ble Supreme Court, which is impermissible. Hence, the CFR is rejected.”

7. Aggrieved by the said and similar orders, the above Civil Revision Petitions were filed.

8. Since the above facts are not in dispute the following two points are framed for consideration and the learned counsel for the parties addressed their arguments on the following points.

1. Whether the defendant, who is the petitioner herein, is entitled to file applications even after striking off the defence and what is the scope for the defendant’s participation in the proceedings in the pending suit.
2. Whether the present CRPs are maintainable against the discretionary orders of the trial Court.

9. The learned Senior Counsel, Sri Y.V. Ravi Prasad, by placing reliance on **Modula India v. Kamakshya Singh Deo**^[1], submitted that the present applications are maintainable before the trial Court as they do not relate to the presentation of the defendant’s case. He also placed reliance on a decision of this Court reported in **D. Ram Mohan Rao v. M/s. Sidevi Hotels Pvt.Ltd**^[2].

10. Learned counsel appearing for the respondent/plaintiff placed reliance on the same **Modula India’s** case (1 supra) and submitted that the defendant is not entitled to lead any evidence of his own nor

file any application when his defence was struck off. He also submitted that the impugned orders passed by the trial Court are in the nature of discretionary orders and this Court cannot review such orders in exercise of power conferred under Article 227 of the Constitution of India. He also placed reliance on the decisions reported in **Surya Dev Rai v. RamChander Rai**^[3], **Shalini Shyam Shetty v. Rajendra Shankar Patil**^[4], **Radhey Shyam v. Chhabi Nath**^[5] and **Jai Singh v. Municipal Corporation of Delhi**^[6].

11. There is no dispute regarding relationship of the parties. The plaintiff was a lessee of the land belonging to the APSRTC and under an agreement with it was permitted to construct a commercial complex and sub-lease the same to third parties. The plaintiff entered into a sub-license agreement for a period of 10 years from 01.04.2009 with the defendant for running hotel and hospitality services business. The defendant committed default in payment of rents and sought time for payment of arrears of rent directed by the trial Court by four months agreeing to strike out the defence in case of default before the Hon'ble Supreme Court. The defendant did not pay the arrears of rent within the time specified by the Hon'ble Supreme Court. Consequently the defence is struck off. Now the right of the defendant in the pending suit has to be decided in the light of striking off the defence. The relevant provision for striking off the defence pursuant to a default committed by the defendant under the Code of Civil Procedure is as follows.

“Order XVA”

STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub- rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation.-The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule."

12. The said provision was brought into force by CPC (Amendment) Act, 1976 with effect from 01.02.1977.

13. In **Modula India's** case (1 supra) the Hon'ble Supreme Court had an occasion to consider a similar provision occurring in Section 17(3) of West Bengal Premises Tenancy Act, 1956. In the said case, a suit was filed in 1977 in the original side of Calcutta High Court praying for a decree directing the defendant to deliver vacant possession of the premises. In the said suit the defence of the tenant was struck off under Section 17(3) of the West Bengal Premises Tenancy Act, 1956. The said order has become final. It was contended before the trial Court by the tenant that he can exercise the following rights:

- (a) cross-examining the plaintiff's witnesses;
- (b) pointing out to the court the factual and legal infirmities in the plaintiff's case; and
- (c) addressing arguments on the basis of evidence as adduced by the plaintiff and tested by the cross-examination on behalf of the defendant.

A Full Bench of the Calcutta High Court by a majority of two to one decided that in a matter where the defence was struck off, the

defendant-tenant cannot cross-examine the witnesses called by the plaintiff excepting on the point of notice under Section 13(6) of the said Act. Against the said decision the tenant went to the Hon'ble Supreme Court. The Hon'ble Supreme Court considered the nature and scope of rights available to a defendant whose "defence has been struck off". The Hon'ble Supreme Court summarised the pros and cons of the situation in the light of the arguments advanced by the counsel and accepted the view of the minority Judge in the Full Bench decision of the Calcutta High Court. Ultimately, the Hon'ble Supreme Court observed as follows.

"18. We agree that full effect should be given to the words that defence against ejectment is struck off. But does this really deprive the defendant tenant of further participation in the case in any manner? While it is true that, in a broad sense, the right of defence takes in, within its canvass, all aspects including the demolition of the plaintiff's case by the cross-examination of his witnesses, it would be equally correct to say that the cross-examination of the plaintiff's witnesses really constitutes a finishing touch which completes the plaintiff's case. It is a well established proposition that no oral testimony can be considered satisfactory or valid unless it is tested by cross-examination. The mere statement of the plaintiff's witnesses cannot constitute the plaintiff's evidence in the case unless and until it is tested by cross-examination. The right of the defence to cross-examine the plaintiff's witnesses can, therefore, be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff's evidence cannot be acted upon. Looked at from this point of view it should be possible to take the view that, though the defence of the tenant has been struck out, there is nothing in law to preclude him from demonstrating to the court that the plaintiff's witnesses are not speaking the truth or that the evidence put forward by the plaintiff is not sufficient to fulfill the terms of the statute.

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 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.

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 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's case. 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 not 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.

23.....

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."

14. Learned counsel for the petitioner, by placing reliance on **D. Ram Mohan Rao's** case (2 supra), submitted that IA No.1169 of 2015 should have been allowed when the said application is for clubbing the present suit with OS No.284 of 2014 filed by the petitioner/defendant. He submits that since the latter suit is an independent suit, notwithstanding his status as a defaulted defendant in the present suit, he can maintain the latter suit and that suit should have been clubbed along with the present suit. There is no dispute with regard to maintainability of the suit filed by the petitioner herein in OS No.284 of 2014, but whether that suit should be clubbed with the present suit or not is at the discretion of the trial Court and when the trial Court has exercised its discretion properly this Court cannot interfere with the same.

15. Thus, it is clear that when a defence of the defendant is struck off, he has no case to put forward, but that does not automatically entitle the plaintiff to succeed without satisfying the Court of the genuineness of the case. The Court has got a duty to verify the *bona fides* and genuineness of the case and for the said purpose the defendant can point out the lapses in the case of the plaintiff without adducing any evidence, either oral or documentary of his own. When this limited right is available, is it open to the defendant, whose defence was struck off, to file independent applications which may

require the decision on facts? The answer to the said point should be "No". The defendant shall not be allowed to file applications calling upon the plaintiff to answer those applications, which are beyond the limited scope given to the defendant when his defence was struck off. In view of the same, I hold that the applications filed by the present petitioner before the trial Court are not maintainable in law and the trial Court had properly exercised its discretion in dismissing the applications on the ground that those applications are not maintainable.

16. In the instant case the defendant himself accepted before the Hon'ble Supreme Court that his defence can be struck off in case of failure to deposit the arrears of rent within the extended time granted by the Hon'ble Supreme Court. Hence, there is no occasion for the trial Court to pass any order striking off the defence by applying its mind independently. Assuming for a moment that under the deeming order of the Hon'ble Supreme Court, if the trial Court passed an order striking off the defence after applying its mind to the facts of the case, even then it is held that such an order is a discretionary order. In view of the striking off the defence, the dismissal of the applications filed by the defaulted defendant are also discretionary orders passed by the trial Court and this Court can straight away dismiss the CRPs challenging such orders. Neither the trial Court nor this Court can go into the merits of such applications filed by the defaulted defendant after his defence was struck off. In view of the same, the decisions cited by the learned counsel for the respondent in **Surya Dev Rai v. RamChander Rai** (3 supra), **Shalini Shyam Shetty v. Rajendra Shankar Patil** (4 supra), **Radhey Shyam v. Chhabi Nath** (5 supra) and **Jai Singh v. Municipal Corporation of Delhi** (6 supra) are not required to be examined by this Court.

17. Accordingly, this Court holds that the orders passed by the trial Court dismissing the applications filed by the defaulted tenant are not

erroneous warranting interference of this Court.

18. All the Civil Revision Petitions are, accordingly, dismissed.
There shall be no order as to costs.

19. As a sequel thereto, the miscellaneous petitions, if any pending
in these Civil Revision Petitions, shall stand closed.

A.

Date: 27th July, 2016
Nsr

RAMALINGESWARA RAO, J

[\[1\]](#) (1988) 4 SCC 619

[\[2\]](#) 2005(6) ALT 712

[\[3\]](#) (2003) 6 SCC 675

[\[4\]](#) (2010) 8 SCC 329

[\[5\]](#) (2015) 5 SCC 423

[\[6\]](#) (2010) 9 SCC 385