

* _THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

+ CIVIL REVISION PETITION Nos.3860 & 3861 of 2015

% 28-11-2018

Deepa Sharma (in both cases)

... Petitioner

Vs.

\$ Navneet Rai (in both cases)

... Respondent

! Counsel for the Petitioner: Sri CH.RAVINDER

Counsel for the Respondent: None appeared

< Gist:

> Head Note:

? Cases referred:

1. (1988) 4 SCC 619



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

* * * *

CIVIL REVISION PETITION Nos.3860 & 3861 of 2015

Between:

Deepa Sharma (in both cases)

..... PETITIONER

AND

Navneet Rai (in both cases)

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: 28.11.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

D.V.S.S.SOMAYAJULU,J

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION Nos.3860 & 3861 of 2015

COMMON ORDER:

These two civil revision petitions are filed questioning the orders, dated 30.06.2015, passed in I.A.Nos.173 and 174 of 2015 in O.S.No.69 of 2010, by the IV Senior Civil Judge, City Civil Court, Hyderabad.

The suit O.S.No.69 of 2010 is filed for eviction and for recovery of arrears of rents and future mesne profits. In that suit, I.A.No.916 of 2014 was filed for striking off the defence of the defendant for his failure to deposit rents as per the earlier order of the trial court. As the tenant did not deposit the rents, an application filed under Order 15A CPC was allowed and the defence of the defendant was struck off in the suit proceedings. It is also noticed that prior to this, an application bearing I.A.No.1246 of 2010 was filed for deposit of rents and the same was allowed. Against the said order, the tenant preferred a revision bearing CRP No.4299 of 2011, which was also dismissed on merits. No further appeal or revision was filed against the order in I.A.No.916 of 2014. Therefore, the striking off the defence of the defendant has become final. After the striking off of the defence of the defendant, PWs 1 and 2 were examined. The tenant failed to cross examine the witnesses. This right to cross-examine was forfeited. The tenant then filed two applications, i.e., I.A.Nos.173 and 174 of 2015, to reopen the evidence and to recall PWs 1 and 2 for the purpose of cross examination. These two applications were allowed. Questioning the orders passed in these applications, both these revision petitions have been filed.

Despite notice, the respondent/defendant did not appear. This court has heard Sri Ch.Ravinder, learned counsel for the petitioner. As the revision raises an important question of the participation of a party in the further proceedings after his defence has been struck off; this court requested the learned counsel to argue further on that aspect also apart from the grounds raised in the revision.

It is the contention of the learned counsel for the petitioner that the order of deposit of rents has become final and even the revision petition filed by the tenant has been dismissed. He also points out that the order of striking off the defence of the defendant has also become final. Therefore, his contention is that the respondent/defendant cannot be allowed to cross examine the witnesses at all. Learned counsel for the petitioner also points out that in the impugned order, the learned IV Senior Civil Judge did not consider the legal position and gave blanket permission to the tenant to cross examine PWs 1 and 2. He argued that a party whose defence is struck off; cannot cross examine the witnesses at all.

Later after the legal position was once again examined in detail at this court's insistence, the learned counsel for the petitioner chanced upon a judgment of the Hon'ble Supreme Court in *Modula India v. Kamakshya Singh Deo*¹ and points out that in cases of this nature a party whose defence has been struck off can participate in the trial to a limited extent and that he does not have an unbridled power to cross examine the witness at his convenience etc. The learned counsel drew the attention of this court to paragraph Nos.16 to 24 of the said judgment, and also relied upon the conclusions that are spelt out by the

¹ (1988) 4 SCC 619

Hon'ble Supreme Court in paragraph No.24 of the said judgment. The same are re-produced hereunder:

“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.

In that view of the matter, this court is of the opinion that the recall of PWs 1 and 2 cannot be faulted. However, the further participation of the tenant in such cases where the defence is struck off should be limited to;

- a) Cross examination of the plaintiff's witnesses only;
- b) Addressing arguments on the plaintiff's case;

In addition:-

- 1) The defendant cannot cross examine the plaintiff's witnesses extensively and his cross examination should be confined to limited objective of pointing out the falsity or the weaknesses of the plaintiff's case.
- 2) The defendant under the guise of the cross examination cannot present his own case, either directly or in the form of suggestions to the plaintiff's witnesses.
- 3) The defendant whose defence is struck off; cannot lead any evidence on his own.

With these observations, these two civil revision petitions are allowed. No order as to costs.

The lower court is directed to keep a watch on the proceedings, particularly, the line of cross examination, in view of the clear decision of the Hon'ble Supreme Court (cited supra) on the subject.

As the cases are of the year 2010 and as admittedly the rents have also not been deposited, the lower court is directed to dispose of the suit, in accordance with law, as expeditiously as possible, preferably within a period of 3 (three) months from the date of receipt of a copy of this order.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 28.11.2018
Dsr

Note:
LR copy to be marked
B/o
Dsr

D.V.S.S.SOMAYAJULU,J

