

AD. 4.
April 11, 2022.
MNS.

F.M.A. No. 2025 of 2018
with
CAN 1 of 2018(CAN 2563 of 2018)

M/s. Hanuman Trading Co.
Vs.
Kesto @ Kristo Mullick and another

Mr. Sabyasachi Chowdhury,
Ms. Urmila Chakraborty,
Mr. Amit Meharia,
Ms. Paramita Banerjee,
Ms. Subika Paul
...for the plaintiff/appellant.

Mr. Arnab Roy,
Mr. Satyam Mukherjee
...for the defendants/respondents.

At the time of admission of the appeal, we propose to hear out the appeal itself, as the parties are represented, by dispensing with all formalities at the stage of admission.

The appeal is arising out of an appellate order dated February 28, 2018 in an appeal preferred by the respondents against an order of eviction passed by the learned trial court. The appellate court remanded the matter to the trial court for writing a judgment afresh after taking into consideration the case made out by the defendants.

The reason for such remand as it appears from the order of the appellate court seems to be that the defendants were not given opportunity to adduce evidence even to deny the case of the plaintiff. The

other grounds seems to be that the trial court ought to have on the basis of pleadings reframed the issues and in doing so have to take into consideration the judgement of the appellate court.

Shorn of unnecessary details, the respondents failed to comply with the order under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 and the order of striking out of the defence by the trial court in its order dated 17th December, 2005 was unnecessarily challenged up to this Court as a result whereof the order striking out the defence attained finality.

However, as the law laid down by the Hon'ble Supreme Court in the case of Modula India Vs. Kamakshya Singh Deo reported at (1988) 4 Supreme Court Cases 619, the said order by itself may not preclude the appellant to cross-examine the plaintiff's witness to establish the falsity of weakness of the plaintiff's case. The relevant observations are in paragraph 24 read thus:

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 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' 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."

The fact reveals that the letter of attornment dated 10th March, 1995 was duly served as the Acknowledgement Due card was received by the plaintiff and produced at the time of trial shows the signatures of the defendants dated 7th July 1995 and 13th July 1995 respectively.

The learned counsel representing the respondents submits that there is mis-description of the defendants and one of the agents of the defendants has put his signature. It is well-settled that if an employee or an agent of a party accepts the notice it should be deemed to be a service upon the principal.

It is unbelievable that the said agent or the employee would not inform the defendants about the service of the notice or it could be ignored knowing consequences that may result by not responding to the said notice. Even otherwise, all the attempts by the defendants to deny the title of the plaintiff had failed in the earlier proceeding. The evidence of the parties before the trial court would reveal that the

defendants had been extensively cross-examined by the plaintiff.

The learned counsel for the defendants submits that all the grounds have not been proved and established at the time of trial by the plaintiff. However, if one of the grounds for which the eviction can be claimed is proved, the failure to prove other grounds would not disentitle to the plaintiff to decree as the grounds are severable and distinct.

On such consideration, the basis of the findings of the appellate court seems to be that the defendants were not given opportunity to adduce evidence even to deny the case of the plaintiff. The right of giving any independent evidence by the defendants is circumscribed by the restriction mentioned in paragraph 24 of *Modula India* (supra), which clearly shows 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 weakness of the plaintiff's case.

In this case the trial court has followed the aforesaid principle and has been overlooked by the appellate court while remanding the matter to the trial court.

On such consideration, we set aside the order of the appellate court dated February 28, 2018 and

affirm the judgment and decree passed by the learned Trial court on September 21, 2006.

The appeal is allowed, without however any order as to costs.

In view of disposal of the appeal, the connected application is disposed of accordingly.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)