

09.09.2022
SL No.6
Court No.8
(gc)

SA 116 of 2022

**Smt. Balaka Bajpyi
Vs.
Sri Anil Kumar Gupta**

The second appeal appeared in the daily list on 5th September, 2022 and no interest was shown by the appellant to move the second appeal.

The appellants are also not represented today nor any accommodation is prayed for on behalf of the appellant. Although, the appellant has sufficient knowledge and notice of the listing of this matter.

The second appeal is arising out of a decree of affirmation dated 9th May, 2012 whereby the judgment and decree passed by the learned Trial Judge on 19th October, 2008 in a suit for recovery of possession, mesne profits, damage and permanent injunction. It appears that the defence of the appellant struck-off due to non-compliance of the order directing deposit of arrear rent along with current rent under Section 17(2) of the West Bengal Premises Tenancy Act, 1956. The learned Trial Judge was absolutely correct in holding that the defendant can only cross-examine the plaintiff on the point of notice and he cannot be allowed to cross-examine in respect of other point as because of defence has already been struck-off. The learned Trial Court was satisfied with the service of notice and, accordingly, decreed the suit. This was affirmed by the Appellate Court. The Appellate Court has taken note of the order passed by a

learned Single Judge in C.O. No.2472 of 2002 whereby the determination of rent and payment of arrear rent as directed by the Trial Court was challenged. The order dated 15th May, 2002 was assailed before the learned Single Judge of this Court in C.O. No.2472 of 2002. The said revisional application was disposed of on 6th March, 2003. The revisional Court directed the appellant to pay a sum of Rs.4,37,479.72/- being the arrear rent between September, 1993 and February, 2003 by 12 monthly installments along with the current rent. The appellant did not deposit the said amount whereby the Trial Court struck-off the defence.

Admittedly, the appellant did not comply with the said order. In view thereof, by an order dated 10th November, 2003, the petition filed by the decree-holder under Section 17(3) of the said Act was allowed by the learned Trial Court and the defence against the delivery of possession of the defendant was struck off. It was on such conspectus of facts, the decree was passed and the Appellate Court affirmed the said decree.

There is no substantial question of law is involved in the second appeal.

The second appeal, accordingly, stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)