

August 4, 2023
Sl. No.10
Court No.19
s.biswas

CO 189 of 2023

Smt. Jharna Ghosh
vs.
Sri Debibrata Chattopadhyay

Mr. Subhrendu Halder
Mr. Abhirup Halder

... for the petitioner

Mr. Aniruddha Chatterjee
Mr. Saptarshi Kumar Mal
Mr. Subhradeep Roy

... for the opposite party

This revisional application is directed against an order dated November 22, 2022, passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore, in Title Suit No.23051 of 2012.

By the order impugned, the learned court below rejected an application filed by the defendant with a prayer to cross-examine PW1 on all documents which were filed at the time of institution of the suit. Some of such documents were produced and marked as exhibits by the plaintiff and others were neither relied upon nor marked as exhibits by the plaintiff. They were merely mentioned in the plaint. The documents annexed to the plaint were photocopies.

Subsequently, originals of some of those documents were relied upon, were tendered in evidence and marked as exhibits. After closure of cross-examination, the petitioner/tenant filed an application for recalling PW1 for further cross-

examination on the other documents which were not marked as exhibits.

During the pendency of the suit for eviction of licensee, the plaintiff filed an application for a direction upon the tenant to pay occupational charges. The plaintiff's case was that as the defendant was the licensee in respect of the property and the license had been terminated, the licensee was bound to pay the occupational charges for occupying the premises after expiry of the license, even during the pendency of the suit. Such prayer was turned down by the learned trial judge. The prayer was also turned down by the High Court.

Aggrieved, the plaintiff/landlord approached the Hon'ble Apex Court and Civil Appeal No.8 of 2016 was registered. Total sum of Rs.17,36,000/- as occupational charges on and from May 1, 2006 to August 31, 2016 at the rate of Rs.14,000/- per month was directed to be paid in two instalments. First of such instalment was directed to be paid within four weeks from the date of the order and the next instalment was directed to be paid within four weeks thereafter.

On and from September 1, 2016, the occupational charges as per the direction of the Hon'ble Apex Court was enhanced to Rs.25,000/- which was to be paid by 10th day of every month

according to English calendar year. In default, the evidence of the defendant should be struck off. The suit was directed to be decided within a period of one year.

The payment was not made by the defendant. Contempt application was filed by the plaintiff/landlord, before the Hon'ble Apex Court. In the contempt application, the Hon'ble Apex Court not only reiterated the order of payment of the occupational charges, but also directed that the defence of the defendant would be struck off and the court must proceed in accordance with law.

The Hon'ble Apex Court directed as follows:

“When an order has been passed by this Court, it has to be given effect in letter and spirit. An order passed by this Court cannot be permitted to be treated as a paper order. The spirit behind the order dated 23.08.2016 passed by this Court is clear that in the event the respondent fails to clear the arrears, she will not be permitted to defend her case and the trial will proceed without her defence.

We are clearly of the view that the learned trial Judge has permitted indirectly to do what has been prohibited directly by this Court vide order dated 23.08.2016.

We, therefore, modify the orders passed by the learned Civil Judge (Senior Division) dated 14.01.2022 and 08.04.2022 and clarify that the respondent-defendant would be permitted only to cross-examine the plaintiff

with regard to the documents produced by the plaintiff.”

From the tenor of the order of the Hon’ble Apex Court in the contempt application, it is very clear that the Hon’ble Apex Court deprecated the orders passed by the learned trial court by which the learned trial court had invoked inherent powers under Section 151 of the Code of Civil Procedure to allow further cross-examination of PW1, by reopening the same, upon payment of cost. The Hon’ble Apex Court also observed that the learned Civil Judge (Senior Division) had wrongly held in the order dated April 8, 2022 that although the evidence of the defendant had been struck off, the defence had not been.

The spirit behind the order dated August 23, 2016 was that the defendant would not be permitted to defend her case and the trial would proceed without her defence. Thus, it was clarified that the defendant would only to be permitted to cross-examine the plaintiff with regard to the documents produced by the plaintiff.

In this context, the learned advocate has tried to interpret the expression ‘documents produced’ as all documents which were mentioned in the plaint, and photo copies of which were annexed to the plaint, but were neither tendered by the plaintiff nor

marked as exhibits. In the subsequent order of the Hon'ble Apex Court, it had been clearly stated that the purport of the order dated August 23, 2016 was that the defence would be struck off in case of default in payment of arrears.

Under such circumstances, a further application under Section 151 of the Code of Civil Procedure to allow the defendant to once again cross-examine the PW1 after the order of the Hon'ble Apex Court in the contempt petition dated August 26, 2022, is an abuse of the process of court, and a dilatory measure to drag the suit. The application under Section 151 of the Code of Civil Procedure was misconceived. The learned advocate for the plaintiff has produced the orders passed in the suit, which indicate that the suit is near completion. The argument of the plaintiff is over. Arguments of the defendant has been completed in part. The law is well settled that the defendant, whose defence had been struck off, can only cross examine the plaintiff, in order to demolish the plaint case and not to set up his own case. Even the arguments should be restricted to the plaint case.

The revisional application is dismissed.

All the parties are directed to act on the basis of the server copy of the order.

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

(Shampa Sarkar, J.)