

Item No.6
05.09.2023
Court. No. 19
GB

C.O. 1139 of 2022

Sri Tarak Mukherjee

Vs.

Sri Narayan Chandra Saha @ Narayan Saha

*Mr. Arnab Roy,
Mrs. Sayani Ahmed*

...for the Petitioner.

*Mr. Surojit Deb,
Mr. Subhajit Das*

...for the Opposite Party.

The revisional application arises out of an order dated April 21, 2022, passed by the learned Civil Judge (Junior Division), 1st Court at Barasat in Title Suit No.682 of 2017. By the order impugned, the learned court below closed the evidence of P.W.1 and fixed a date for evidence of D.W. The defendant was allowed to cross-examine the P.W.1 in full. The P.W.1 was discharged. On the prayer of the learned advocate for the defendant, a date was fixed for the evidence of D.W.

The learned advocate for the plaintiff/landlord submits that once the defence of the defendant was struck off in terms of Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act'), by an order dated September 27, 2021, no opportunity could be given to the defendant to adduce evidence.

Mr. Roy, learned advocate appearing on behalf of the petitioner, relies on the decision of the Hon'ble Apex Court in the matter of ***Modula India versus Kamakshya Singh Deo*** reported in ***(1988) 4 Supreme Court Cases 619*** and on a decision of this Court in the matter of ***M/s.***

Hanuman Trading Co. versus Kesto @ Kristo Mullick and another, passed in F.M.A. No.2025 of 2018.

Mr. Deb, learned advocate appearing on behalf of the tenant submits that compliance with Sections 7(1) and 7(2) of the said Act, gives protection to a tenant from eviction, only if the ground for eviction is default. Referring to Section 7(3) of the said Act, Mr. Deb goes on to submit that the defence of the tenant can be struck off for non-payment of rent, if the suit for eviction is on the ground of default. Section 7(3) has two parts. The first part deals with striking off the defence of a tenant in case of failure to fulfil the obligation to deposit rent in accordance with Sections 7(1) and 7(2) of the said Act and the second limb of the said section is a mandate upon the Court to proceed with the hearing of the suit.

The mandate upon the court to hear out the suit, includes recording of evidence of both parties. The expression 'suit' was incorporated by substituting the expression 'proceeding'. A proceeding may or may not include acceptance of evidence. Whereas in a suit, evidence was a part and parcel of the adjudicatory process. When the legislature consciously amended the provision, the defendant should be allowed to adduce evidence, in spite of being a defaulter. In the instant case, reasonable requirement was also a ground for eviction. The learned court below did not err in allowing the D.W. to adduce evidence to contest the suit on the said ground.

It is next contended that the order by which the defence was struck off, had specifically provided that the

defendant had a right to contest on the basis of the written statement. Further, once the issues had been framed and there was no objection with regard to the issues, the defendant could not be prevented from adducing evidence. Mr Deb also distinguishes the decision in *Modula India* (supra), on the ground that the said decision was rendered in respect of the West Bengal Premises Tenancy Act, 1956 and the Act had been repealed.

Considered the arguments advanced by the parties. A plain reading of Section 7 of the said Act indicates that the benefit of protection given to a tenant against eviction under the said section, applies to all eviction suits, instituted by the landlord on any of the grounds mentioned in Section 6 of the said Act. In this case, the grounds for eviction are default and reasonable requirement. Both these grounds are included in Section 6 of the said Act. Hence, the first contention of Mr. Deb that the provisions of Section 7 and the consequences of default would only be restricted to a suit for eviction on the ground of default, is not tenable in law.

Secondly, the language of Section 7(3) also does not indicate that an order striking out the defence of a tenant, is limited only to the ground of default. The section provides that the civil judge 'shall' pass an order to the effect that the defence against 'delivery of possession' would be struck off and the civil judge 'shall' proceed with the hearing of the suit. Defence against delivery of possession means the defence that would be set up by a tenant, against a claim for eviction. Eviction can be claimed on any one ground or on two or

more grounds provided in Section 6 of the said Act. When the defence has been struck off, the only thing required to be proved by the landlord, is his requirement for own use and occupation.

Moreover, incorporation of the expression 'suit' was a consequence of an amendment by which the power upon the controller to decide eviction proceedings had been taken away and vested upon the civil judge. Thus, the expression 'proceeding' was substituted by the expression 'suit' as the civil judge would adjudicate a suit for eviction. The object of the amendment was to take away matters relating to eviction of tenants from the jurisdiction of the controller.

Moreover, the decision in the Modula India (supra), was a decision on the issue as to the correct interpretation of the expression 'defence being struck off'. The said decision although dealt with the scope of Section 17(3) of the West Bengal Premises Tenancy Act, 1956, in effect, the Hon'ble Apex Court actually decided whether the defendant would be entitled to lead any evidence of his own or cross-examine the plaintiff on all points or whether the defendant could travel beyond the very limited objective of pointing out falsities or weaknesses of the plaintiff's case, by arguing his own case.

The first paragraph of Modula India (supra) is quoted hereunder:

“A somewhat important question as to the nature and scope of the rights available to a defendant whose “defence has been struck out” call for determination in this appeal in the particular context of the West Bengal Premises Tenancy Act, 1956. The appeal arises from the judgment of a Full Bench of the Calcutta High Court constituted to resolve a conflict in the earlier decisions of the same

court on this issue. The Full Bench, by a majority of two (P.K. Banerjee and Chittatosh Mookerjee, JJ.) to one (Ramendra Mohan Datta, Acting C.J.) decided that in a matter where the defence against delivery of possession has been struck out under sub-section (3) of Section 17 of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as the 'Act') the defendant-tenant cannot cross-examine the witness called by the plaintiff, excepting on the point of notice under Section 13(6) of the said Act. The correctness of the view taken by the majority is contested in this appeal."

Section 17(3) of the Act of 1956 and Section 7(3) of the Act of 1997 are pari materia except the benefit afforded to the tenant to deposit or pay by instalments against delivery of possession, if the tenant fails to deposit or pay any amount in accordance with sub-sections (1) and (2) within time specified or within such extended time as may be granted. Both the sections are quoted below:

"17(3) If a tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be allowed under clause (a) of sub-section (2A), or fails to deposit or pay any instalment permitted under clause (b) of sub-section (2A) within the time fixed therefor, the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit."

"7(3) If the tenant fails to deposit or pay any amount referred to in subsection (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit."

The Hon'ble Apex Court held that even in a case where defence was against delivery of possession and the defence was struck off, the defendant would generally be entitled to cross-examine the plaintiff's witness and advance arguments on the basis of the plaintiff's case, but in no circumstances, the

defendant could be allowed to lead evidence of his own nor cross-examine the plaintiff's witnesses beyond the scope of the plaint case. Such a defendant could not set up his own defence and argue his own case. The relevant paragraph is quoted below:

“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.”

Similar view was taken by an Hon'ble Division Bench of this court in the matter ***M/s. Hanuman Trading Co. versus Kesto @ Kristo Mullick and another*** passed in F.M.A. No.2025 of 2018. The relevant portion of the order is quoted below:-

“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 on 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.”

Thus, the revisional application is allowed. The order impugned is set aside.

The learned court below is directed to proceed with the hearing of the arguments of the parties. As the eviction suit has been pending since long, the learned court below shall make a sincere endeavour to dispose of the suit within a period of six months from the date of communication of this order.

The revisional application is thus disposed of.

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.)