

Item No. 17
08.06.2023
Court. No. 19
GB

C.O. 1688 of 2023

Smt. Prava Mukherjee
Vs.
Raj Kumar Sonkar & Ors.

*Mr. Sibnath Ganguly,
Ms. Bina Baidya*

...for the Petitioner.

*Mr. Kushal Chatterjee,
Mr. Debrup Choudhury*

...for the Opposite Parties.

The petitioner is a tenant aggrieved by an order dated April 11, 2023 passed in Title Suit No.281 of 1990. By the said order, the learned Civil Judge (Junior Division), 2nd Court at Sealdah rejected two applications filed under Section 151 of the Code of Civil Procedure dated March 15, 2023 by the defendant/tenant.

The title suit is a suit for eviction. By one application under Section 151 of the Code of Civil Procedure, the tenant approached the learned court below to decide the issue of the relationship between landlord and tenant and also decide the quantum of arrear rent payable by the tenant, upon condonation of delay. The said application was filed on March 15, 2023. Along with the aforementioned application, a further application was filed to allow the tenant to cross-examine the P.W.1 on all points. Both the applications were rejected on the following grounds:-

- a) The application under Section 17(2) (a) and (b) of the West Bengal Premises Tenancy Act, 1956

(hereinafter referred to as the old Act) had been rejected on April 1, 1994. Again, the defendant/tenant filed an application under Section 151 of the Code of Civil Procedure for modification of the order of rejection. By an order dated April 15, 2004, the said application under Section 151 of the Code of Civil Procedure was rejected on merits.

- b) The defendant did not prefer any revision against the said orders and the orders became final.
- c) After 33 years from filing of the suit, the defendant once again prayed for determination of the rent and the relationship of landlord and tenant under Section 17(2) of the old Act.

The learned court found that the intention of the defendant was to delay the eviction suit and refused to grant any further extension of time to pay the arrear of rent and also refused to decide the question of the relationship between landlord and tenant, inter alia, holding that the said point could not be re-opened.

The learned trial court was of the view that the petitioner had slept for 33 years over his right to challenge the order of rejection of the 17(2) application and suddenly the petitioner could not wake up and pray for a re-determination of the issue which had already closed.

Next, the learned court held that the petitioner not having availed of any remedy in terms of Section 17(2) of the

West Bengal Premises Tenancy Act at the appropriate stage and not having paid the arrears, shall face the consequences of the defence being struck off. Upon finding that the defendant could not give any explanation as to why the issue of 17(2) application could not be raised earlier and before appropriate forum after its subsequent rejection on merits, the court refused to entertain the application filed under Section 151 of the Code of Civil Procedure. For convenience, the relevant portion of the order is quoted below:-

“In view of this Court when the 17(2) application filed by the defendant has been rejected, it is very clear that, the prayer of the defendant also been dismissed by this Court. As there is no force of the prayer of the 17(2) application filed by the defendant, it can be assumed by this Court that, defence of the defendant has automatically struck off and as per proposition of law defendant has no right to cross examine the plaintiff's witness on any point of this defence. In 2015(I) ICC 902, The Calcutta High Court observed that, after striking off the defence of tenant it is not permissible to reopen the ground of jurisdiction in a suit for recovery of possession.”

The other application under Section 151 of the Code was also rejected by the learned court below upon, inter alia, holding that the defence having been struck off, the petitioner would only be entitled to cross-examine the plaintiff's witness and address arguments on the basis of the plaintiff's case without leading any evidence and without bringing anything on record which was beyond the plaint case.

Having perused the documents and the factual aspects which have been gone into by the learned trial court, it appears that no further opportunity can be given to the petitioner to pray for deposit of arrear rent in order to avail of the provisions of Section 17(4) of the West Bengal Premises Tenancy Act, 1956. In view of the settled position in the matter of Bijay Kumar Singh versus Amit Kumar Chamaria reported in 2020(1) Indian Civil Cases 664(SC) wherein, the Hon'ble Apex Court has clearly stated that the plain reading of Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the new Act) clearly left no space for the court to condone the delay in deposit of rent.

The provisions of Section 17(1) and 17(2) of the West Bengal Premises Tenancy Act, 1956 are *pari materia* with the new Act and at this stage, after 33 years from filing of the suit and 29 years from the rejection of the application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 and the recalling application on merits, the point cannot be reopened. The petitioner did not move any higher forum against such rejection.

Secondly, the law is well-settled with regard to the opportunity that a tenant can have once his defence is struck off. Reference is made to the decision of Modula Inda versus Kamkshya Singh Deo reported in (1988) 4 Supreme Court Cases 619. The relevant paragraphs of the said decision is quoted below:-

“20. We, therefore, think that the defendant should be allowed his right of cross-examination and arguments. that this right should be subject to certain important safeguards. The But we are equally clear first of these is that the defendant cannot be allowed to lead his own evidence. None of the observations or decisions cited have gone to the extent of suggesting that, in spite of the fact that the defence has been struck off, the defendant can adduce evidence of his own or try to substantiate his own case.

21. Secondly, there is force in the apprehension that if one permits cross-examination of the plaintiff's witnesses by the defendant whose defence is struck off, procedural chaos may result unless great care is exercised and that it may be very difficult to keep the cross- examination within the limits of the principles discussed earlier. Under the guise of cross-examination and purported demolition of the plaintiff's case, the defendant may attempt to put forward please of his own. To a reply from the plaintiff which may derogate from his own case and questions put out to substantiate pleas in defence which the defendant may have in mind and to restrict the cross-examination to its limits will be not an easy task. We think, however, that this is a difficulty of procedure, rather than substance. As pointed out by Ramendra Mohan Dutta, J. this is a matter to be sorted out in practical application rather than by laying down a hard and fast rule of exclusion.

22. A third safeguard which we would like to impose is based on the observations of this Court in Sangram Singh case. As pointed out therein, the essence of the matter in all such cases is that the latitude that may be extended by the court to the defendant in spite of his having filed a written statement, should not cause prejudice to the plaintiff. Where the defendant does not file a written statement or where he does not appear to contest the case the plaintiff proceeds on the basis that there is no real opposition and contents himself by letting in just enough evidence to establish a prima facie case. Therefore, the court should ensure that by permitting the defendant at a later stage either to cross-examine the witnesses or to participate in the proceeding the plaintiff is not taken by surprise or gravely prejudiced. This difficulty however can be easily overcome in practice, because there is a wide discretion with the court and it is always open to the court, where it believes that the plaintiff has been misled, to exercise its discretion to shut out cross-examination or to regulate it in such manner as to

avoid any real prejudice to the interests of the plaintiff.

23. An objection to our above conclusion has been raised on the basis of the provisions of Order VIII of the Code of Civil Procedure. Rules 1, 5 and 10 of this order have been recently amended by the Amendment Act of 1976. We find nothing in these rules which will support the contention urged on behalf of the respondents. Rule 1 merely requires that the defendant should present a written statement of his defence within the time permitted by the court. Under Rule 5(2), where the defendant has not filed a pleading it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint except against a person under disability but the court may in its discretion require any such fact to be proved. Again under Rule 10 when any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, the court "shall pronounce judgment against him or make such order in relation to the suit as it thinks fit". It will be seen that these rules are only permissive in nature. They enable the court in an appropriate case to pronounce a decree straightway on the basis of the plaint and the averments contained therein. Though the present language of Rule 10 says that the court "shall" pronounce judgment against him, it is obvious from the language of the rule that there is still an option with the court either to pronounce judgment on the basis of the plaint against the defendant or to make such other appropriate order as the court may think fit. Therefore, there is nothing in these rules, which makes it mandatory for the court to pass a decree in favour of the plaintiff straightway because a written statement has not been filed. Reference was made before us to sub-rule (1) of Rule 5. This sub-rule, however, has application only in a case where a pleading is filed but does not contain a specific or implicit denial of the averments contained in the plaint or other document to which it is a reply. Rule 5(1) cannot be made use of to sustain the contention that where there is no written statement the court is bound to accept the statements contained in the plaint and pass a decree straightway. These provisions of the Code of Civil Procedure, far from supporting the contentions of the plaintiff that a decree on the basis of the plaint should follow a failure to file the written statement, rather indicate a contrary position, namely, that even in such cases, it is a matter for the court to exercise a discretion as to the manner in which the further proceedings should take place. We, therefore, do not think that the terms

of Order VIII in any way conflict with the conclusion reached by us. .

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 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 witness."

Thus, in view of the abovementioned decisions as well, the petitioner cannot cross-examine the plaintiff on all points. It is well-settled that on issues beyond the scope of the plaint case or on additional issues, no arguments can be advanced. The above-mentioned decision of the Hon'ble Apex Court shall be followed in its letter and spirit. The Tenant cannot lead evidence or argue beyond the plaint case. The safeguards laid down by the learned Apex Court in *Modula Inda (supra)* shall be applicable. The order impugned itself, can be treated as an order striking off the defence of the tenant. The suit shall proceed on the limited points as already decided by the learned trial court.

The revisional application is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)