

February 22, 2024
Sl. No.78
Court No.19
s.biswas

CO 134 of 2024

Smt. Kabita Biswas and others
vs.
Sri Sadhan Dasgupta

Mr. Prantick Ghosh
Mr. Prasad Bhattacharyya
Mr. Sandip Dutta
... for the petitioner
Mr. Tarak Nath Halder
... for the opposite party

The revisional application arises out of two orders dated October 4, 2023 and January 4, 2024, passed by the learned Civil Judge (Junior Division), Additional Court at Sealdah in Ejectment Suit No.109 of 2014.

By the first order, the learned trial judge closed the cross-examination of PW1. By the second order, the application for recalling of the earlier order and allowing the petitioner to cross-examine the PW1 was rejected.

Under such circumstances, the revisional application has been filed on the ground that even if the defence of the defendants had been struck off for non-compliance of Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997, the right to cross-examine the PW1 could not be taken away.

Reliance has been placed on the decision of the Hon'ble Apex Court in **Modula India v. Kamakshya Singh Deo** reported in AIR 1989 SC 162.

Mr. Halder, learned advocate for the plaintiff, submits that the plaintiff has been suffering unnecessarily for the lack of diligence of the defendants and the intentional delay caused. Mr. Halder submits that the defendants refused to cross-examine PW1, although opportunity was granted by the learned court.

Further reliance has been placed on the decision of a co-ordinate Bench, which had directed the learned trial judge to complete the suit within a period of three months.

I agree with the submission of Mr. Halder, that the learned court cannot be faulted. A direction to dispose of the suit within three months had been passed by a co-ordinate Court. It is also true that the defendant has wasted time.

However, as this is the last straw the defendants have to participate in the proceedings after having the defence against the delivery of possession struck off, they can only cross-examine the plaintiff's witnesses in order to demolish the plaintiff case and also advance arguments to demolish the plaintiff case. The relevant paragraph of **Modula India** (supra) 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."

Under such circumstances, one last opportunity is given to the defendant to cross-examine the PW1. Such cross-examine shall be completed within two days from the next date fixed, upon payment of cost of Rs.15000/- to the plaintiff by the defendants. The cost shall be paid within two days from date. Orders impugned are set aside. The cross-examination will be in terms of the law quoted hereinbefore. The arguments to be advanced by the defendants shall also be restricted to the weaknesses and falsities in the plaint case.

The revisional application is accordingly 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.)