

March 14, 2024
Sl. No.16 & 17
Court No.19
s.biswas

CO 2675 of 2022
With
CO 1844 of 2023

Supriya Chattopadhyay and another
vs.
Kabra Marbles Corporation and others

Mr. Anirudha Chatterjee
Mr. Iftekar Munshi

... for the petitioner

Mr. Haradhan Banerjee
Mr. Amitava Pain
Mr. Subhrangshu Datta
Mr. Partha Pratim Mukherjee

... for the opposite parties

Let the two revisional applications are detagged.

In re: CO 2675 of 2022

This revisional application arises out of the manner in which the learned Civil Judge (Senior Division), 1st Court at Alipore, has been dealing with Ejectment Suit No.05 of 2008. Allegation is of unnecessary delay.

Mr. Chatterjee, learned advocate for the petitioner submits that the defence of the tenant was struck off. Despite the defence having been struck off, the learned court had kept the matter pending for days together, only to trace out the written statement.

According to Mr. Chatterjee, there was no requirement for the written statement as the defendants did not have right to a defence. The defendants could not place their own case in the eviction suit

Mr. Banerjee, learned advocate appearing for the tenant submits that a copy of the written statement which had been retained by the defendants could easily be handed over to the court and the court could proceed accordingly.

Having heard the respective parties, this court finds that by order dated November 30, 2015, the defence of the tenants had been struck off. Under such circumstances, the tenants only have a right to cross-examine the plaintiff and advance arguments to demolish the plaint case. The defendants cannot set up their own defence. Thus, irrespective of whether the written statement is on record or not, the averments of the defendants in support of their case, cannot be taken into consideration.

Reference is made to ***Modula India v. Kamakshya Singh Deo*** reported in ***AIR 1989 SC 162***. The relevant portion 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."

The revisional application is disposed of. Accordingly, the learned court is directed to dispose of the suit within six months from date.

In re: CO 1844 of 2023

Let this matter appear under the heading 'To Be Mentioned' on March 20, 2024.

(Shampa Sarkar, J.)