

12.04.2024
Sl. No.8(DL)
srm

C.O. No. 4332 of 2023
Smt. Shanti Mondal & Anr.
Versus
Sri Bateswar Shaw & Ors.

Mr. Souvik Das
..... Petitioners.

Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee,
Mr. Kaustav Bhattacharya,
Ms. Sinjini Chakroborty,
Ms. Priyanka Jana
...for the Opposite Parties.

1. The revisional application arises out of an order dated October 3, 2023 passed by the learned Civil Judge (Junior Division), 6th Court at Howrah, in Title Suit No.165 of 2013.
2. The suit is being heard analogously with Title Suit No.64 of 2013. Title Suit No.64 of 2013 has been filed by the tenants/petitioners for declaration of tenancy and other reliefs.
3. Title Suit No.165 of 2013 is a suit for eviction filed against the petitioners, by the opposite parties. The petitioners failed to comply with the provisions of Section 7 of the West Bengal Premises Tenancy Act, 1997 in the said suit.

Accordingly, the learned court struck off the defence of the petitioners.

4. Thereafter, the learned court proceeded with the suits and debarred the petitioners from adducing any evidence and from cross-examining the DW1 on various issues relating to Title Suit No.165 of 2013.
5. This Court agrees with the learned trial Judge to the extent that in respect of Title Suit No.165 of 2013, as the defence of the petitioners had been struck off, the petitioners were not entitled to adduce any evidence in support of or in furtherance of their case. However, the Court disagrees with the part where the petitioners were debarred from cross-examining the landlord and/or the landlord's witnesses.
6. The order impugned is modified to the extent that the petitioners will be entitled to lead evidence and also cross-examine the defence witnesses in Title Suit No.64 of 2013, if the same is not already over.
7. With regard to Title Suit No.165 of 2013, the petitioners will only be entitled to cross-examine the defence witness/witnesses without leading any evidence of their own and without setting up their defence case under the garb of cross-examination. They can only demolish the

plaint case by pointing out the weaknesses in the suit for eviction. Under no circumstances will the cross-examination be allowed to travel beyond the scope of the cross-examination and convert itself into a virtual presentation of the defence case either directly or indirectly or in the form of suggestions put to the plaintiffs' witnesses.

8. Reference is made to 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.

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."

9. As it appears that the suits are at the stage of evidence and both the suits are of 2013, the learned court is requested to dispose of both the suits within a period of six months from the date of communication of this order.
10. The revisional application is, thus, disposed of.
11. There shall be no order as to costs.
12. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)