

Sl. 220
01.05.2025
Court No.6
BP

C.O. 222 of 2025

Madhu Sutodia
-versus-
Mrs. Harpreet Raur Kohili

Mr. Probal Kumar Mukherjee, Sr. Advocate
Mr. Souradipta Banerjee
Ms. Fatima Hassan
..for the petitioner

Mr. Siddhartha Lahiri
Mr. Debraj Dutta
Ms. Nivedita Mullick
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being no. 81 dated November 25, 2024 passed by the learned Judge, 6th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 641 of 2011.

By the order impugned the application filed by the petitioner herein for taking off the suit from the ex parte board and to grant an opportunity to the petitioner to contest the same stood rejected.

Mr. Mukherjee, learned senior advocate appearing for the petitioner submits that the erstwhile learned advocate of the petitioner died and for which the petitioner could not take effective steps in the suit for which the suit was directed to be proceeded with ex parte against the petitioner. He further submits that at

the relevant point of time lock down was imposed on account of Covid pandemic and for such reason the petitioner also could not take steps in the suit at the relevant point of time.

Mr. Lahiri, learned advocate appearing for the opposite party vehemently opposes the prayer of Mr. Mukherjee. He submits that the petitioner did not take any steps in the suit for more than five years. He further submits that the defense of the petitioner against delivery of possession has already been struck off and, therefore, no useful purpose would be served by allowing the petitioner to contest the instant suit.

Heard the learned advocates for the respective parties and perused the materials placed.

It is not in dispute that the defense of the petitioner against delivery of possession was struck off under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997. At this stage it would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of Modula India vs. Kamakshya Singh Deo reported at 1998 (4) SCC 619. The Hon'ble Supreme Court in Modula India (supra) in paragraph 24 of the said reports has specifically held that even after the defense has been struck off the defendant can cross-examine the plaintiff's witness; and address argument on the basis of the plaintiffs case. The Hon'ble Supreme Court in the said decision has clearly laid down the

safeguards which are to be kept in mind while allowing the defendant to cross-examine the plaintiff's witness in such a case.

Thus, this Court is of the considered view that even after the defense of the petitioner against delivery of possession was struck out the petitioner was entitled to cross-examine the plaintiff's witness and to address arguments within the limited scope as laid down by the Hon'ble Supreme Court in the case of *Modula India* (supra). However, the fact remains that the petitioner could not cross examine the plaintiff's witness and was not allowed to advance argument as the suit was proceeding ex parte against the petitioner.

After considering the averments made in the application dated 27th July, 2023 more particularly paragraphs 5, 6, 7 and 8 thereof, this Court is of the considered view that the petitioner has assigned good cause for his previous non appearance within the meaning of "good cause" as appearing in Order 9 Rule 7 of the Code of Civil Procedure.

For such reason, this Court is inclined to allow the prayer of the petitioner. Accordingly, the order fixing the suit for ex parte hearing is vacated and the petitioner is permitted to contest the suit within the limited scope as laid down by the Hon'ble Supreme Court in *Modula India* (supra) subject to the condition

that the petitioner shall pay a cost of Rs. 15,000/- to the opposite party herein on or before May 5, 2025.

If the cost as directed hereinbefore is paid to the opposite party within the time mentioned hereinbefore the learned trial judge shall allow the petitioner to participate in the proceeding in accordance with law from the stage the suit was fixed for ex parte hearing.

It is, however, made clear that if the petitioner fails to pay the amount as directed by this Court within the time limit mentioned hereinbefore this order shall stand automatically recalled without any further reference to this Court. The impugned order stands set aside.

The learned advocate on record of the petitioner assures this Court that the petitioner shall not take any unnecessary adjournment before the learned trial judge.

With the above observations and directions, C.O. 222 of 2025 stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)