

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 5182 of 2025

M/s. Jindal (India) Ltd.
Vs
The State of West Bengal & Ors.

For the Petitioner : Mr. Ranjay De, Sr. Adv.
Mr. Basabjit Banerjee,
Mr. Adityajit Abel Bose,
Mr. Suvradal Choudhury. .

For the Respondent : Mr. Lakshman Chandra Halder,
No. 3 Ms. Nimisha Agarwal.

Hearing concluded on : 20.06.2025

Judgment on : 01.07.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for setting aside of the award dated 13.12.2024 passed by the 2nd Industrial Tribunal, Kolkata.
2. Learned counsel for the petitioner has brought the notice of this Court to page 30-31 and 32 of the award, wherein the tribunal has held as follows:-

“..... Though the OP company has asked the above questions to the petitioner in his cross-examination regarding his income after his termination, the OP company

*has not mentioned the said matters in its written statement and **those questions in the cross-examination are beyond the pleadings of the OP company and accordingly the said cross-examinations cannot be considered legally according to law.***

According to the decisions of the Hon'ble Supreme Court as reported in (2018) 12 SCC page 663 and (2019) 18 SCC page 814, the OP company has not pleaded and has not produced any evidence to prove that after termination the petitioner was gainfully employed and accordingly, he was not entitled to claim back wages.

In order to prove by evidence that after his termination the petitioner was gainfully employed elsewhere, the OP company should have pleaded the same in its written statement according to law but instead of pleading, the OP company has asked some questions to the petitioner regarding gainful employment in his cross-examination and the said cross-examinations cannot be given any legal value in absence of pleading to that effect.

Though in his examination in chief and written statement the petitioner has not whispered anything about any income from stock trading and the written statement of the OP company is also silent over it, the OP company has asked the petitioner in his cross-examination about this stock trading and in his cross-examination the petitioner has stated that he tries to make stock trading and in his affidavit in chief he has not mentioned that he has suffered loss in stock trading.

The OP company has not pleaded and proved by any evidence to show that since after termination of service till not the petitioner has been earning sufficient money from the stock trading and the

petitioner has not pleaded in his written statement and affidavit in chief that he was involved in the stock trading and accordingly he had no legal liability to prove this stock trading while the OP company has legal liability to produce document to show that by means of stock trading, the petitioner has been earning sufficient money since after termination of service till now and accordingly the said cross-examinations by the OP company on this point are baseless and valueless.....”

3. The Petitioner’s case is that as the tribunal has not considered the cross-examination by the petitioner herein and passed the award, the award is bad in law and is liable to be set aside being not in accordance with law and thus against the principle of natural justice.
4. The petitioner has relied upon the judgment in ***State of Rajasthan & Ors. vs. Heem Singh*** reported in ***(2021) 12 SCC 569*** wherein the Court held as follows:-

“36. The Division Bench found fault with the Single Judge for not having seen the evidence of Jodh Singh in its entirety. A two-Judge Bench of this Court in P. John Chandy & Co. (P) Ltd. v. John P. Thomas, has held : (SCC p. 95, para 7)

“7. For proper appraisal of evidence, a court must consider the whole statement. Cross-examination constitutes an important part of the statement of a witness and whatever is stated in the examination-in-chief, stands tested by the cross-examination.”

While embarking on the exercise the Division Bench reappreciated the evidence in the manner of a first appellate court. This criticism of the decision is not unfounded.”

5. **In the award in this case, it is clear that the cross-examination done by the petitioner was not considered at all by the tribunal to arrive at the decision.**
6. In ***Mohammed Abdul Wahid vs. Nilofer & Anr.*** in ***Special Leave Petition (Civil) No. 14445 of 2021, decided on December, 14, 2023,*** the Supreme Court held as follows:-

“26. To conclude the issue at hand – The freedom to produce documents for either of the two purposes i.e. cross examination of witnesses and/or refreshing the memory would serve its purposes for parties to the suit as well. Additionally, being precluded from effectively putting questions to and receiving answers from either party to a suit, with the aid of these documents will put the other at risk of not being able to put forth the complete veracity of their claim – thereby fatally compromising the said proceedings. Therefore, the proposition that the law differentiates between a party to a suit and a witness for the purposes of evidence is negated.

*28. It is settled law that what is not pleaded cannot be argued, as for the purposes of adjudication, it is necessary for the other party to know the contours of the case it is required to meet. It is equally well settled that the requirement of having to plead a particular argument does not include exhaustively doing so. We may refer to **Ram Sarup Gupta v. Bishun Narain Inter College**, wherein it was observed as follows :*

“6....It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party

in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. To have a fair trial it is imperative that the party should settle the essential material facts so that the other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words that may not expressly make out a case in accordance with a strict interpretation of the law. In such a case the court must ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead, the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead, the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found in spite of deficiency in the pleadings, parties knew the case and they proceeded to trial on those issues by producing evidence in that event it would not be open to a party to raise the question of absence of pleadings in appeal...”

29. We may also refer to **Udhav Singh v. Madhav Rao Scindia**, wherein a bench of two learned judges observed: “25.... If the plea or ground of defence “raises issues of fact not arising out of the plaint”, such plea or ground is likely to take the plaintiff by surprise, and is therefore required to be pleaded. **If the plea or ground of defence raises an issue arising out of what is alleged or admitted in the plaint, or is otherwise apparent from the plaint, itself, no question of prejudice or surprise to the plaintiff arises. Nothing in the rule compels the defendant to plead such a ground, not debars him from setting it up**

at a later stage of the case, particularly when it does not depend on evidence but raises a pure question of law turning on a construction of the plaint.”

30. A reading of the judgments above would imply that substance is what the courts need to look into, and therefore, in reference to the production of documents, in the considered view of this Court, so long as the document is produced for the limited purpose of effective cross-examination or to jog the memory of the witness at the stand is not completely divorced from or foreign to the pleadings made, the same cannot be said to fly in the face of this established proposition.

31. **Save and except the cross-examination part of a civil suit, at no other point shall such confrontation be allowed,** without such document having accompanied the plaint or written statement filed before the court. For this purpose, reference be made to Order VII Rule 14(4) (This Rule speaks of the plaintiff necessarily listing in his plaint and, producing before the court, the documents upon which they seek to place reliance, in support of his claim. Sub-rule 4 exempts from this obligation documents produced for the limited purpose of cross-examination or to jog the memory of a witness), Order VIII Rule 1A(4)(a) (This Rule speaks of the defendant necessarily listing in his written statement and, producing before the court the documents upon which they seek to place reliance, in defence of his claim for set off or counterclaim. Sub-rule 4 exempts from this obligation documents produced for the limited purpose of cross-examination or to jog the memory of a witness) and Order XIII Rule 1 (3) (This Rule speaks of either party or their pleaders obligatorily producing, post the settlement of issues in a Suit, the documentary evidence upon which reliance is placed. Sub-rule 3 exempts from this obligation documents

produced for the limited purpose of cross-examination or to jog the memory of a witness), all three of which, while dealing with the production of documents, by the plaintiff, defendant and in general, respectively, exempt documents to be produced for the limited purpose of cross-examination or jogging the memory of the witness.

32. In light of the above discussion, and the answer in the negative to the first question before this court, meaning thereby that there is no difference between a party to a suit as a witness and a witness simpliciter- the second issue in this appeal, in view of the provisions noticed above, production of documents for both a party to the suit and a witness as the case may be, at the stage of cross-examination, is permissible within law.”

- 7. Thus the tribunal discarding the evidence in cross-examination by the petitioner on the ground of it being beyond/deficiency in pleadings is not in accordance with law as the parties in this case knew the case and the issues which were involved in the proceedings to which the cross-examination was connected.**
- 8.** The writ petition is accordingly disposed of by setting aside the award dated 13.12.2024 passed by the 2nd Industrial Tribunal, Kolkata, in Case No. 07/2021, the same being not in accordance with law.
- 9.** The Industrial Tribunal is directed to rehear the case by permitting the parties to make their arguments and then on considering the total materials on record and the evidence on record including the cross-examinations which were discarded earlier by the tribunal, write a fresh judgment.

10. The case be disposed of within 30 days from the date of communication of this order.
11. It is made clear that this Court has not gone into the merits of the case and all points are thus kept open.
12. **WPA 5182 of 2025 stands disposed of.**
13. All connected application, if any, stands disposed of.
14. Interim order, if any, stands vacated.
15. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)