

AD- 39
Ct No.16
09.06.2025
(SSS)

SAT 91 of 2025

With

CAN 1 of 2025

Mr. Sailajananda Ghoshal
Vs.
Smt. Basanti Ghoshal

Mr. S. Datta,
Mr. A. K. Raidani
....For the Appellant.

Mr. Tarique Quasimuddin,
Ms. Sanchita Chaudhuri,
Mr. Adnan Lodi
...For the Respondent.

1. The present appeal has been preferred against a judgment of affirmance, whereby the defence of the defendant/appellant in a suit for eviction was struck out under Section 7(3) of the West Bengal Premises Tenancy Act, 1997.

2. Learned Counsel for the appellant submits that despite the defence being struck out under Section 7(3), the defendant is very much entitled to cross-examine the witnesses of the plaintiff and to point out the lacunae in the plaint case and advance

arguments in respect of the suit. However, in view of the defence being struck out in the present case, the learned Trial Judge did not grant any opportunity to the defendant/appellant to so cross-examine and/or advance his arguments and fixed the suit outright on the ex parte board.

3. However, contrary to the arguments of learned Counsel for the appellant, we find from the impugned judgment of the appellate court that the suit was fixed on the ex parte board by the learned Trial Judge since November 18, 2017. On query of the court, learned Counsel for the appellant submits that the appellant's defence was struck out under Section 7(3) as long back as in the year 2015. Although an application was filed by the defendant/appellant under Section 151 of the Code of Civil Procedure, seeking a copy of the examination-in-chief of the plaintiff on the allegation that in the absence of such examination-in-chief, no cross-examination could be conducted, the said application was filed only on January 19, 2019.

4. Thus, the timelines indicate that the defendant/appellant got ample opportunity to appear and contest the suit for over two years from the defence being struck out under Section 7(3) in the year 2015, till November 18, 2017, before the suit was ultimately fixed for ex parte hearing. Hence, the fixing of the suit for ex parte hearing in the present

case was only due to the protracting conduct and repeated adjournments sought by the defendant and not connected in any manner with the striking out of the defence under Section 7(3) of the 1997 Act, the two of which the defendant/appellant is seeking to mix up.

5. The defendant grew wiser, only two years after the suit being fixed on the ex parte board, and filed an application in January, 2019, to create an alibi for not contesting the suit and/or seeking adjournments in the interregnum, thereby purportedly seeking a copy of the examination-in-chief in order to prove to the court that it was the non-availability of such examination-in-chief which deterred the defendant from appearing in the suit previously and/or contesting the same.

6. However, if the defendant was so eager to contest the suit, he should have done so between the defence being struck out under Section 7(3) in the year 2015 and the suit being fixed on the ex parte Board in November, 2017. Having not done so and the suit being fixed on the ex parte board only due to the dilatory tactics adopted by the defendant/appellant, unconnected with the striking out of the defence, we are unable to accede to the arguments of the appellant in that regard. Hence, we do not find any question of law, let alone substantial, involved in the present appeal.

7. Accordingly, SAT 91 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

8. Consequentially, CAN 1 of 2025 stands dismissed as well.

9. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)