

07.07.2025
Item No.116
Court No.25.
AB

**C. O. 2081 of 2022
With
CAN 1 of 2023**

**Kaushik Mitra
Vs
Indira Ghosh & Anr.**

Mr. Anindya Lahiri, Sr. adv,
Mr. Subhomoy Paul,
Mr. A. Chakraborty,
Ms. Sananda Gangulifor the Petitioner.

Mr. P. K. Mukherjee, Sr. adv,
Mr. Debanik Banerjee,
Mr. Hazaifa Shahidfor the Opp. Parties.

1. Learned Senior Counsel for the petitioner submits that the plaintiff no.2/opposite party no.1, Ms. Indira Ghosh has died and the learned Trial Court vide order dated May 19, 2025, has, inter alia, held that suit against Ms. Indira Ghosh stood abated.
2. In the circumstances, let the name of the opposite party be deleted from the cause title.
3. Leave is granted to learned Advocate on record for the petitioner to amend the cause title.
4. The present petition has been filed challenging the order dated 4.5.2022, 11.5.2022 and 14.06.22. The facts in brief as canvassed by learned Senior Counsel for the petitioner is that a suit was filed by the

opposite parties against the petitioner herein.

In the said suit, the defendant/petitioner after filing the written statement was proceeded ex parte by the learned Trial Court vide order dated 06.12.2018.

5. This order was challenged before this Court in C.O. 3670 of 2019 unsuccessfully. The review application filed against this order also met the same fate. The SLP filed before the Apex Court also got rejected. Thus, the ex parte order against the petitioner/defendant stood affirmed till the Apex Court.
6. The grievances of the learned Counsel for the petitioner now is that the petitioner has been denied the right of cross examination by the learned Trial Court vide order dated 4.5.2022. Learned Counsel submits that further vide order dated 11.05.2022, the learned Trial Court preponed the date of hearing.
7. Learned Senior Counsel submits that by order dated 11.05.2022, the learned Trial Court allowed the amendment petition filed by the plaintiff without serving the copy of the same upon the petitioner/defendant.
8. Learned Senior Counsel further submits that the learned Trial Court further vide order

dated 14.06.2022 rejected the petition filed by the petitioner/defendant for participating in the proceedings. Thus, the grievances as raised by learned Senior Counsel is that the learned Trial Court has not only denied the petitioner/defendant to cross examine the opposite party witness but also refused the right of the petitioner/defendant to participate in the proceedings.

9. Learned Counsel for the opposite parties has vehemently opposed the petition. Learned Counsel submits that since the ex parte order against the petitioner/defendant stood affirmed till the Apex Court, the present petition is liable to be rejected.

10. The Court has considered the submissions. Recently the Apex Court in ***Kanchhu Vs Prakash Chand & Others*** reported in **2025 SCC Online SC 868** while entertaining a petition, inter alia, held as under:

“19. Pleadings, either in a plaint or a written statement, constitute the plinth on which the respective claims and defence of the parties to a civil suit rest. What a pleading ought to contain is provided in Order VI Rule 2, CPC. Only material facts, on which the party pleading relies for his claim or defence to succeed, have to be stated without the evidence by which the pleading is to be proved. Once the pleadings are complete but the

defendant is set ex parte, and such order has attained finality, the defendant's rights suffer a curtailment. He cannot produce evidence in defence and hence statements, which are in the nature of factual assertions, cannot be proved by leading evidence. Generally speaking, the limited right that the defendant, set ex parte, would have is confined to cross examining the plaintiff's witnesses. The effort has to be directed toward demonstrating that they are not speaking the truth and, thereby, demolish the case of the plaintiff. Essentially, therefore, in such a case the defendant has to convince the court that the case put up by the plaintiff is so false that the court ought not to accept it. However, if the defendant raises an issue on law which is traceable in the written statement, for instance, the suit is barred by limitation or Section 9, CPC is attracted, or if the relief claimed in the suit cannot be granted for reasons disclosed, the requirement of the defendant proving such defence as raised in the written statement by leading evidence may not arise and the court may frame an issue of law and decide the same."

11. It is pertinent to mention here that in Kanchu case (supra) the defendants were proceeded ex parte after filing the written statement. A bare perusal of the observation made by the Apex Court makes it clear that after the defendant is proceeded ex parte, his right to participate in the lis gets limited to a large extent. The defendant shall not be able to assert the factual submissions made in the written statement, nor will he be able to produce his defence evidence. However, the

defendant can certainly demolish the case of the plaintiff by pointing out the loopholes and lacunas in the same by way of the cross examination. The defendant shall certainly have a right to demonstrate that evidence as being led by the plaintiff is not cogent, credible and trustworthy.

12. However, even at the cost of brevity, it may be stated that though the defendant is debarred from putting up his own defence, however the legal issues which have been taken in the written statement, i.e.; limitation, bar of jurisdiction etc. can always be raised by the defendant. However, the defendant after being proceeded ex parte, which has been affirmed till the Supreme Court, cannot pray for his right to participate in the proceedings, as if it is permitted, it would amount to diluting the order of ex parte against the defendant.

13. In such circumstances, the present petition is disposed of with the direction that the petitioner/defendant shall be entitled to cross examine the opposite party/witnesses only to the extent of demolishing the case of the plaintiff without establishing or asserting the defence as canvassed in the written

statement. The petitioner shall also be entitled to cross-examine the opposite party/plaintiff witnesses, who have already been examined. However, all the points of law like limitation etc. can be raised by the petitioner during the course of the trial.

14. C.O. No.2081 of 2022 and CAN 1 of 2023 stand disposed of.

15. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)