

27.02.2025
Item No.4
Ct. No. 30
Aloke

C.O. 2327 of 2024

**Eastern Coalfields Limited
Vs
Ambey Mining Pvt. Ltd. & Ors.**

Mr. Debnath Ghosh, ld. Sr. Adv.
Mr. Syed Nurul Arefin
Mr. Syed Moyeenur Arefin
... for the petitioner

Mr. Aniruddha Chatterjee, ld. Sr. Adv.
Mr. Tanmoy Mukherjee
Ms. Anurdha Podder
... for the opposite parties

The present revision has been preferred against an order dated 17.05.2024 passed by the learned Judge, Commercial Court at Asansol in Title Suit (Commercial) no. 14 of 2024.

By the said order under revision the Court permitted the defendant/petitioner herein to contest the case. But considering the relevant provisions of law rejected the defendant's prayer for filing of written statement.

It is the case of the petitioner/defendant that though he has forfeited his right to file his written statement, the Court did not permit him to cross-examine the plaintiff's witnesses which under the law he is entitled to.

Learned counsel for the petitioner has relied upon the judgment in **Modula India vs. Kamakshya Singh Deo** reported in **(1988) 4 SCC 619** paragraph

23 and 24 and **Nanda Dulal Pradhan & Anr. vs. Dibakar Pradhan & Anr.** reported in **2022 SCC Online SC 822** paragraph 5 which reads as follows :

*“5. At this stage it is required to be noted that as such the First Appellate Court gave specific findings while setting aside the ex-parte judgment and decree that the defendant nos. 2 & 3 have made out a sufficient cause for setting aside the ex parte judgment and decree. But while passing the impugned judgment and order the High Court has not at all dealt with and considered the findings recorded by the First Appellate Court, recorded while setting aside ex-parte judgment and decree. The High Court has set aside the order passed by the First Appellate Court solely on the ground that as the defendant nos. 2 & 3 did not file the written statement and contested the suit, the reopening of the suit would become futile. **However, as observed and held by this Court in the case of Sangram Singh (supra) on setting aside the ex-parte decree and on restoration of the suit the parties to the suit shall be put to the same position as they were at the time when the ex-parte judgment and decree was passed and the defendants may not be permitted to file the written statement as no written statement was filed. However, at the same time they can be permitted to participate in the suit proceedings and cross-examine the witnesses. In that view of the matter the impugned judgment and order passed by the High Court is unsustainable. Still, on***

setting aside the ex-parte judgment and decree, though the defendants who had not filed the written statement, can be permitted to participate in the suit and cross-examine the witnesses. Therefore, the High Court is not right in observing that as no written statement was filed by the defendants, the reopening of the suit by setting aside ex-parte judgment and decree will become futile. As observed hereinabove the High Court has not at all observed anything on the correctness of the order passed by the First Appellate Court setting aside the ex-parte judgment and decree on merits.”

Considering the said fact and the materials on record and in the interest of justice, the order under revision dated 17.05.2024 is modified to the extent that the trial Court shall permit the petitioner/defendant herein to cross-examine the plaintiff's witnesses and then proceed for conclusion of trial, in accordance with law.

Be it noted that no unnecessary adjournment shall be granted by the trial Court and all endeavour should be made to dispose of the suit expeditiously.

C.O. 2327 of 2024 is accordingly disposed of.

There will be no order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shampa Dutt (Paul), J.)