

D/L- 37
25/08/2025
Ct. No.-6
Aritra

C.O. 3026 of 2025

**Seuli Saha & Anr.
Vs.
Smt. Sita Das & Ors.**

Mr. Tarak Nath Halder

...for the petitioners

Mr. Gautam Das

....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against orders dated July 3, 2025 and July 16, 2025 passed by the learned Civil Judge (Jr. Div.), 1st Court at Sealdah in Ejectment Suit No.105 of 2019.

By the order impugned the prayer of the petitioner to adduce evidence according to their defence case stood rejected.

Mr. Halder, learned advocate appearing for the petitioner places reliance upon a decision of the Hon'ble Supreme Court in **Pawan Kumar Agarwal vs. Parbati Chorone Roquitte**, reported at **2025(2) ICC 640 (SC)**.

The learned advocate appearing for the opposite party submits that the defence of the petitioner against delivery of possession was struck off under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 and, therefore, the petitioner would not be entitled to lead any evidence of his own nor can his cross-examination be

permitted to travel beyond the very limited object of pointing out the falsity or weakness of the plaintiff's case.

In support of such contention he placed reliance upon a decision in the case of **Modula India vs. Kamakshya Singh Deo**, reported at **(1988) 4 SCC 619**. He further refers to a decision of the Hon'ble Division Bench in the order dated April 11, 2022 passed in **F.M.A. No.2025 of 2018** in the case of **M/s. Hanuman Trading Co. vs. Kesto @ Kristo Mullick & Anr.** as well as the order dated July 28, 2025 passed by this Court in **C.O.2470 of 2025** in the case of **Shambhu Nath Manna vs. Tapas Mitra & Anr.**

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

It is not in dispute that the defence of the petitioner against delivery of possession was struck off under the provisions of Section 7 (3) of the 1997 Act.

The Hon'ble Supreme Court in the case of **Modula India (supra)** held that in a case where the defence against delivery of possession of a tenant is struck off, the defendant, subject to the exercise of an appropriate discretion by the Court on the facts of a particular case, would generally be entitled to cross-examine the plaintiff's witness; and to address argument on the basis of the plaintiff's case. The Hon'ble Supreme Court made it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be

permitted to travel beyond the very limited object of pointing out the falsity or weakness of the plaintiff's case and in no circumstances should the cross-examination be permitted to travel beyond the legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.

The Hon'ble Division Bench in the case of **M/s. Hanuman Trading Co. (supra)** after relying upon the decision in the case of **Modula India (supra)** held the right of giving any independent evidence by the defendants is circumscribed by the restriction mentioned in paragraph 24 of **Modula India (supra)**, which clearly shows that the defendant would not entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited object of pointing out the falsity or weakness of the plaintiff's case.

The aforesaid proposition of law laid down in **Modula India (supra)** was also relied upon by this Court in the case of **Shambhu Nath Manna (supra)**.

In **Pawan Kumar Agarwal (supra)** the Hon'ble Supreme Court after noting that the defence of the tenant has already been filed directed the same to be taken on record and directed the learned trial judge to proceed thereafter in accordance with law and to dispose of the ejectment suit as expeditiously as possible.

In **Pawan Kumar Agarwal (supra)** the Hon'ble Supreme Court did not observe that in a case where the defence of the petitioner has been struck out under Section 7 (3) of the 1997 Act the said defendant has a right to lead his own evidence or that his cross-examination can be permitted to travel beyond the very limited object of pointing out the falsity or weakness of the plaintiff's case.

In **Pawam Kumar Agarwal (supra)**, the Hon'ble Supreme Court only directed the written statement already filed to be taken on record and the learned trial judge was directed to proceed in accordance with law.

Mr. Halder would contend that since the Hon'ble Supreme Court in **Pawan Kumar Agarwal (supra)** directed the written statement to be taken on record, it implies that the tenant whose defence has been struck off shall be entitled to lead his own evidence.

At this state it would be relevant to take note of the observations of the Hon'ble Supreme Court in **Modula India (supra)**. In Paragraph 17 of the said reports it has been held thus:

“Paragraph-17: It has already been noticed that in the Calcutta High Court, there has been unanimity on the point that even where defence is struck out, the validity of the notice under Section 13(6) is challengeable. This has been the settled view of that court for several years now which it would be inequitable to disturb after such a long

time. This type of cases, however, has been sought to be distinguished on the ground that such notice is a condition precedent to the institution of the suit and cannot perhaps be described as a defence to the suit. This, however, is too tenuous a distinction. For, in truth and substance the plea regarding the validity of the notice has invariably to be taken as a plea in defence in such suits. The rule, therefore, is really an exception to the strict application of a rule that a tenant whose defence is struck off cannot be heard at all against the plea of ejectment.”

The Hon'ble Supreme Court clarified that the plea regarding validity of the notice which is taken as a plea in defence in eviction suit can be challenged even when defence is struck out.

In view of the aforesaid discussions this Court is of the view that the decision in the case of Pawan Kumar Agarwal (*supra*) cannot come to the aid of the petitioner in the case on hand.

The learned trial judge was right in rejecting the application filed by the petitioner permitting him to lead evidence by referring to the observation of **Modula India (supra)** that the defendant should be allowed his right of cross-examination and arguments and that such right should be subject to certain important safeguards and the first of such is that the defendant cannot be allowed to lead his own evidence.

In view thereof, this Court is not inclined to grant any relief to the petitioner.

Accordingly, CO 3026 of 2025 stands dismissed.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)