

12.12.2025
Court No.06
Item no.04
CP

C.O. No. 4037 of 2025

Indrani Mukherjee & Anr.
Vs.
Pravat Kumar Basak & Anr.

Mr. Sagnik Chatterjee
.....for the petitioners.

Mr. S.P. Dalapati
Mr. Indranil Ganguly
Mr. S. Santra

.....for the opposite parties.

This application has been filed by the defendants/tenants in a suit for eviction under the West Bengal Premises Tenancy Act, 1997. The petitioners are aggrieved by the orders dated August 7, 2024 and July 8, 2025, passed by the learned civil Judge (Junior Division), 2nd Court, Sealdah in Title Suit No.400 of 2006.

By the first order that is impugned, the learned court fixed the suit for ex parte hearing as the records revealed that the petitioners were not interested and diligent enough to contest the suit. By the second order the learned court struck off the defence of the petitioners and did not recall the order dated August 7, 2024.

It appears from the orders impugned before this court that the petitioners did not take any steps to comply with the mandatory provisions of Section 7

of the West Bengal Premises Tenancy Act, 1997. In my view, the court was right in striking off the defence of the petitioners.

However, the law is well settled that, even if the defence of the tenants is struck off, the tenants have a right to demolish the plaint case by cross-examining the plaintiff's witnesses, without setting up any defence or without leading evidence. The trend of cross-examination is only limited to demolition of the case of the plaintiff on the basis of the averments in the plaint and the examination-in-chief i.e. filed by the plaintiff's witnesses.

In the decision of the Hon'ble Apex Court in the matter of ***Modula India versus Kamakshya Singh Deo*** reported in ***(1988) 4 Supreme Court Cases 619***, the Hon'ble Apex Court had held that in a suit which was appearing undefended, the defendant may enter appearance by exercising a limited right to cross-examine the plaintiff's witnesses and to advance arguments to demolish the plaint case. Relevant paragraph is quoted below:-

“For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under [section 17\(4\)](#) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

(a) to cross-examine the plaintiff's witnesses;
and

(b) to address argument on the basis of the plaintiff's case.

We would like to make 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 objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this 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 orders impugned are modified to the extent that the petitioners shall be allowed to cross-examine the plaintiff's witnesses. The learned court will fix two consecutive dates in close interval to complete the process of cross-examination. Thereafter, the arguments shall be heard without allowing the petitioners to set up any defence in the course of arguments, but only limiting the arguments of the petitioners to point out the defect in the plaintiff's case.

The revisional application is disposed of accordingly. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)