



CWP-8330-2024(O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-8330-2024(O&M)
Reserved on: 16.10.2025
Pronounced on: 19.12.2025
Uploaded on:19.12.2025

Whether only operative part of the judgment is pronounced or the full Judgment is pronounced.

Full Judgment

TARSEM SINGH AND OTHERS

PETITIONER

VS.

DEBTS RECOVERY TRIBUNAL-III, CHANDIGARH AND ANOTHER

RESPONDENTS

**CORAM:- HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY**

Present:- Mr. Bhushan Bhatia, Advocate
for the petitioners.

Mr. Teginder Singh, Advocate for
Mr. Gaurav Goel, Advocate
for respondent No.2 Bank.

SANJIV BERRY, J.

1. The present petition has been preferred by the petitioners under Article 226/227 of the Constitution seeking issuance of writ of certiorari for quashing of impugned orders dated 19.12.2022 (Annexure P-4), 07.12.2023 (Annexure P-6), 05.02.2024 (Annexure P-8), 12.02.2024 (Annexure P-11), impugned award and decree dated 14.02.2024 (Annexure P-14) passed by the Presiding Officer, Debt Recovery Tribunal-III, Chandigarh whereby defence of the petitioner in Case No. OA/186/2020 (Annexure P-1) had been struck off and permission to address the arguments had also been denied. Besides seeking writ

**CWP-8330-2024(O&M) -2-**

of mandamus directing the respondent Tribunal to decide the OA/186/2020(Annexure P-1) after considering the reply dated 21.02.2022 (Annexure P-2) and written submissions dated 13.02.2024 (Annexure P-12) filed by the petitioner before the Tribunal.

2. In nutshell the facts of the case are that the petitioners having availed Kisan Credit Card Scheme (in short KCC) limit of ₹15 lakh wherein petitioner No.3 and 4 stood guarantors and later the limit was enhanced to ₹48 lakh on 27.07.2022 in favour of the petitioners No.1 to 4 wherein petitioner No.5 stood as guarantor and security documents were duly executed by the petitioners. Since the petitioners did not adhere to the financial discipline of the Bank, the respondent Bank filed OA/186/2020(Annexure P-1) before DRT-III, Chandigarh wherein defence of the petitioner was struck off vide order dated 19.12.2022 (Annexure P-4), despite the copy of the written statement having been supplied to opposite counsel through Whatsapp message. Further IA No. 557 of 2023 was filed for recalling of the order dated 19.12.2022 (Annexure P-4) which was also dismissed and the Original Application OA-186-2020 was consequently allowed without giving opportunity of cross-examining the witnesses of the Bank and even addressing the final arguments by the petitioners which is manifestly illegal and against settled principles of natural justice, hence, the petition.

3. We have heard learned counsel for the parties and also perused the record.

4. It is *inter alia* contended by learned counsel for the petitioners that Original Application, OA-186-2020, was filed by the Bank against the petitioners consequent upon their account being declared as Non-performing



CWP-8330-2024(O&M) -3-

of written statements was sent to the counsel for the Bank through Whatsapp but due to miscommunication which was reported before the learned Debt Recovery Tribunal-III Chandigarh the same has not been filed, leading to learned Presiding Officer striking off the defence of the petitioners (respondent in OA) vide order dated 19.12.2022 (Annexure P-4). He contends that even an application for recalling the said order was filed which was also dismissed vide order dated 07.12.2023 (Annexure P-6) and ultimately the learned DRT-III, Chandigarh proceeded to pass the final order in OA-186-2020 vide order dated 14.02.2024 (Annexure P-14) without affording opportunity to the petitioners to cross-examine the witness of the Bank and even to address the final arguments. The learned counsel has drawn attention of this Court to the order dated 05.02.2024 (Annexure P-8) whereby the specific application moved by the petitioner seeking right to argue in the OA had also been wrongly dismissed by the DRT-III Chandigarh. He contends that entire proceedings had been carried out by the DRT in an irregular and unjustified manner, not in accordance with law, as a result the entire proceedings stands vitiated, as such prayed for acceptance of the petition.

5. *Per contra*, learned counsel for the respondents has assailed these arguments by submitting that as the petitioners have failed to file the written statement within the stipulated time, the defence was rightly struck off by the DRT-III, Chandigarh. He contends that OA has been rightly and lawfully decided vide impugned order dated 14.02.2024 (Annexure P-14) and no case is made therein to seek interference in favour of the petitioners.

6. After considering the rival contentions and perusing the record, so far as the factual position is concerned, it is not disputed to the extent that the



CWP-8330-2024(O&M) -4-

from the petitioners. The perusal of record reveals that defence of the petitioner was struck off vide order dated 19.12.2022 (Annexure P-4) and the case was adjourned for arguments for 19.06.2023, thereafter the application for recalling of the said order was filed by the petitioner vide IA No.557-2023 which was again dismissed by learned Tribunal vide its order dated 07.12.2023 (Annexure P-6) and the case was adjourned to 19.12.2023 for final arguments and thereafter vide order dated 19.12.2023 (Annexure P-7) the case was adjourned to 05.02.2024. On 05.02.2024 despite repeated requests as is evident from perusal of order (Annexure P-8) made by the learned counsel for the petitioners, that they had right to argue despite striking off defence, the same was declined by the Tribunal and the case was adjourned to 14.02.2024 for final arguments and on that date, without affording opportunity to the petitioners to argue the case, learned DRT-III, Chandigarh passed final order dated 14.02.2024 (Annexure P-14).

7. Therefore, the point of contention of the present case is as to whether the petitioners (Respondents in OA) were having right to cross-examine the witnesses of the Bank and to address the arguments despite their defence having been struck off, the answer is in affirmative, as such a course of action cannot, by itself deprive the petitioner of the opportunity to participate in the proceedings to the extent permissible in law. The issue stands conclusively settled with the verdict given by the Hon'ble Apex Court in **Modula India vs. Kamakhya Singh Deo, Law Finder Doc Id #54978**; the relevant portion whereof reads as under:-

“ 18. We agree that full effect should be given to the words that defence against ejectment is struck off. But does this really deprive the defendant tenant of further participation in the case in any manner? While it is true that, in a broad sense, the right



of defence takes in, within its canvass, all aspects including the demolition of the plaintiff's case by the cross-examination of his witnesses, it would be equally correct to say that the cross-examination of the plaintiff's witnesses really constitutes a finishing touch which completes the plaintiff's case. It is a well established proposition that no oral testimony can be considered satisfactory or valid unless it is tested by cross-examination. The mere statement of the plaintiff's witnesses cannot constitute the plaintiff's evidence in the case unless and until it is tested by cross-examination. The right of the defence to cross-examine the plaintiff's witnesses can, therefore, be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff's evidence cannot be acted upon. Looked at from this point of view it should be possible to take the view that, though the defence of the tenant has been struck out, there is nothing in law to preclude him from demonstrating to the court that the plaintiff's witnesses are not speaking the truth or that the evidence put forward by the plaintiff is not sufficient to fulfill the terms of the statute.

20. *We, therefore, think that the defendant should be allowed his right of cross-examination and arguments. But we are equally clear that this right should be subject to certain important safeguards. The first of these is that the defendant cannot be allowed to lead his own evidence. None of the observations or decisions cited have gone to the extent of suggesting that, inspite of the fact that the defence has been struck off, the defendant can adduce evidence of his own or try to substantiate his own case.*

21. *Secondly, there is force in the apprehension that if one permits cross-examination of the plaintiff's witnesses by the defendant whose defence is struck off, procedural chaos may result unless great care is exercised and that it may be very difficult to keep the cross-examination within the limits of the principles discussed earlier. Under the guise of cross-examination and purported demolition of the plaintiff's case, the defendant may attempt to put forward pleas of his own. To perceive quickly the difference between questions put out to elicit a reply from the plaintiff which may derogate from his own case and questions put out to substantiate pleas in defence which the defendant may have in mind and to restrict the cross-examination to its limits will be not easy task. We think, however, that this is a difficulty of procedure, rather than substance. As pointed out by Ramendra Mohan Dutta, J. this is a matter to be*



sorted out in practical application rather than by laying down a hard and fast rule of exclusion.

22. *A third safeguard which we would like to impose is based on the observations of this court in Sangram Singh's case. As pointed out therein, the essence of the matter in all such cases is that the latitude that may be extended by the court to the defendant inspite of his not having filed a written statement, should not cause prejudice to the plaintiff. Where the defendant does not file a written statement or where he does not appear to contest the case the plaintiff proceeds on the basis that there is no real opposition and contents himself by letting in just enough evidence to establish a prima facie case. Therefore, the court should ensure that by permitting the defendant at a later stage either to cross-examine the witnesses or to participate in the proceeding the plaintiff is not taken by surprise or gravely prejudiced. This difficulty however can be easily overcome in practice, because there is a wide discretion with the court and it is always open to the court, where it believes that the plaintiff has been misled, to exercise its discretion to shut out cross-examination or to regulate it in such manner as to avoid any real prejudice to the interests of the plaintiff.*

23. *An objection to our above conclusion has been raised on the basis of the provisions of Order VIII of the Code of Civil Procedure. Rules 1, 5 and 10 of this Order have been recently amended by the Amendment Act of 1976. We find nothing in these rules which will support the contention urged on behalf of the respondents. Rule 1 merely requires that the defendant should present a written statement of his defence within the time permitted by the court. Under rule 5(2), where the defendant has not filed a pleading it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint except against a person under disability but the court may in its discretion require any such fact to be proved. Again under rule 10 when any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, the court "shall pronounce judgment against him or make such order in relation to the suit as it thinks fit." It will be seen that these rules are only permissive in nature. They enable the court in an appropriate case to pronounce a decree straightaway on the basis of the plaint and the averments contained therein. Though the present language of rule 10 says that the court "shall" pronounce judgment against him, it is obvious from the language of the rule that there is still an option with the court either to pronounce judgment on the basis of the plaint against*



the defendant or to make such other appropriate order as the court may think fit. Therefore, there is nothing in these rules, which makes it mandatory for the court to pass a decree in favour of the plaintiff straightaway because a written statement has not been filed. Reference was made before us to sub-rule 1 of rule 5. This sub-rule, however, has application only in a case where a pleading is filed but does not contain a specific or implicit denial of the averments contained in the plaint or other document to which it is a reply. Rule 5(1) cannot be made use of to sustain the contention that where there is no written statement the court is bound to accept the statements contained in the plaint and pass a decree straightaway. These provisions of the Code of Civil Procedure, far from supporting the contentions of the plaintiff that a decree on the basis of the plaint should follow a failure to file the written statement. rather indicate a contrary position, namely, that even in such cases, it is a matter for the court to exercise a discretion as to the manner in which the further proceedings should take place. We, therefore, do not think that the terms of Order VIII in any way conflict with the conclusion reached by us.

24. *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."

8. Therefore, the striking off the defence for one reason or the other in a proceedings does not extinguish the rights available to the party in the proceeding and some rights still remain including right to cross examine the



CWP-8330-2024(O&M) -8-

witnesses of the plaintiff (Bank in the present case) which is part of principles of natural justice and also addressing the final arguments.

8.1 The striking off defence only prevents the defendant from leading his own evidence but not in any manner testing the evidence of the plaintiff. Moreover, while addressing the final arguments the defendant can certainly point out some legal issues and weaknesses in the case of the plaintiff and therefore, the right to address the final arguments cannot be taken away. The principle underlying this aspect is that even without written statement having been filed by the defendant, his defence having been struck off, the participation of the defendant is allowed so that justice is not one sided and therefore, no injustice is done to any party merely on account of such technicalities. Thus, the Court should not deny the substantial right of the party by the mechanical application of the procedural rules. Therefore, despite the defence having been struck off, the defendant can appear in the proceedings, cross-examine the witnesses of the other party to discredit the case of the plaintiff or to demonstrate any legal bars and also to make final submission of law and evidence before the concerned Court/forum. No doubt this does not in any manner authorize the defendant to lead his own defence to establish any new fact or defence which otherwise should have been pleaded in the written statement.

9. Coming to the facts of the present case in the light of the above discussion, it transpires that the learned Tribunal has acted mechanically in denying the petitioners right to cross-examine the witnesses produced by the Bank and also denying them the opportunity to argue the matter while passing the impugned order dated 14.02.2024 (Annexure P-14).



CWP-8330-2024(O&M) -9-

10. Taking note of the fact that Debt Recovery Appellate Tribunal, Delhi is almost defunct on account of vacancy of Chairperson thereof, therefore we are hereby interfering in the matter in exercise of the powers under Article 226 of the Constitution of India.

11. As a consequent to the above discussion the impugned order dated 14.02.2024 (Annexure P-14) is hereby set aside, therefore, remanding the matter back to the learned DRT-III, Chandigarh to afford the opportunity to the petitioners to cross-examine the witnesses produced by the applicant Bank and also to afford opportunity of addressing the final arguments and thereafter, pass the order afresh, in accordance with law.

12. With the aforesaid observations, the writ petition stands disposed of.

(SANJIV BERRY)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

Dated: 19.12.2025

Gyan

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No`