
(2001) 08 DEL CK 0232

In the Delhi High Court

Case No : I.A. 7161 of 2001 in Suit No. 797/93

Smt. Shukla Malhotra and Others

APPELLANT

Vs

M/s Dee Pee Kagajudyog Pvt. Ltd.

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Delhi Rent Control Act, 1958 — Section 15(1)

Citation : (2001) 94 DLT 724 : (2001) 60 DRJ 725

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Mr. Sanjeev Sachdeva, for the Appellant; Mr. H.L. Tikoo and Mr. Kamal Nijhawan, for the Respondent

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—This is an application on behalf of the defendants, whose defense has already been struck off, for cross-examination of witnesses whose affidavits have been filed by the plaintiff by way of evidence.

2. It is contended by learned counsel for the defendant that in spite of striking off defense, the defendant is still entitled to represent its case and cross-examine the witnesses. No doubt such a right still survives but to the limited extent involving legal objections for instance, whether the suit is barred by limitation or court has no territorial jurisdiction to entertain the suit and likewise as defense when struck off wipes off every defense against decree except legal defenses and patent falsehood of the case of the plaintiffs.

3. However, legal position in respect of aforesaid proposition of law has been enunciated by the Supreme Court in Modula India Vs. Kamakshya Singh Deo, . It was held that where defense is struck off, the defendant would not be entitled to lead any evidence of his own nor his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity of weakness of the plaintiff's case. 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.

4. As it is the basic principle of law that the plaintiff has to prove its case independently in spite of defense having been struck off, the court has to only look at the plaintiff's evidence and pleadings and allow defendant to cross-examine the witnesses of the plaintiff of the aforesaid limited extent and not by way of allowing the defendant to put up its case either directly or indirectly.

5. Other relevant observation is as under:-

"18.The right of the defense to cross-examine the plaintiff's witnesses can, Therefore, be looked upon not as a part of its own strategy of defense 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 defense of the tenant has been struck out, there is nothing in law to preclude his from demonstrating to that 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."

6. Identical provision of striking off defense of a tenant appears in Section 15(7) of Delhi Rent Control Act. Though there is unvarying current of opinion with regard to aforesaid provision that where the defense of the tenant is struck out, all kinds of defenses which are open to the tenant stand struck out. The object is to penalise the tenant for non-compliance of the order u/s 15(1) of the Act directing him to deposit the rent.

7. However this court in *United Auto Tractors (P) Ltd. Vs. Urvashi Rohtagi* 1974 RCR 167, took the view that in spite of defense of tenant having been struck off, he cannot be absolutely expunged from the proceedings. He can still address the Controller in order to convince him that leaving aside the defense raised against the eviction petition, the eviction petition by itself is liable to fail because of patent illegality.

8. Similar view was taken in *N.C. Moitra Vs. Bhupendra Kumar Chatterji* 1978 (1) RCJ 373 that a tenant whose defense against delivering the possession has been struck out, is still permitted to contend before the court and take the defense on the point of non-service or invalidity of the notice and in doing so the tenant is also permitted to cross-examine plaintiff's witnesses and challenge other evidence adduced from the aforesaid point. It was further observed that tenant would not be entitled to take any other plea or cross-examine plaintiff's witnesses on any other point or examine his own witnesses of any point whatsoever.

9. In *Kishan Chand Vs. Ramesh Chander and others* 1969 RCJ 839, a view was taken that the defense against eviction includes every defense which has to be pleaded and, if necessary, has to be proved by the tenant.

10. Thus, where defense is struck off, in no circumstances, cross-examination can be permitted to travel beyond the legitimate scope of pointing out legal infirmities or patent illegalities the case of the plaintiff suffers from or falsity of case itself. Defendant cannot be allowed to convert the cross-examination into virtual presentation of the case. If such a course is allowed, the order of striking out the defense is itself rendered infructuous, ineffective and meaningless. Sanctity of the order has to be maintained at all costs and to convert itself virtually into a presentation of the defendant's case either direct or in the form of suggestions put to the plaintiff's witnesses.

11. With these observations, application is allowed to the aforesaid limited extent.