



A.F.R.

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HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 1605 of 2026

Satish Gupta

.....Petitioner(s)

Versus

Praveen Kumar Singhal

.....Respondent(s)

Counsel for Petitioner(s)	:	Abhishek Kumar Singh, Devid Kumar Singh, Prateek Rai
Counsel for Respondent(s)	:	

Court No. - 33

HON'BLE MANISH KUMAR NIGAM, J.

1. This petition has been filed challenging an order dated 11.11.2025 passed by the Additional District Judge, Court No. 12, Ghaziabad in Original Suit No. 1029 of 2019, Praveen Kumar Singhal vs Satish Kumar Gupta, whereby learned trial court has returned the evidence affidavit filed by the defendant-petitioner and has closed his right to lead evidence.

2. Brief facts of the case are that plaintiff-respondent (hereinafter referred as 'plaintiff'), instituted Original Suit No. 1029 of 2019 for a decree of specific performance of an agreement to sell dated 20.04.2017. After being noticed, defendant-petitioner entered appearance but did not file written statement within the statutory period prescribed under Order VIII Rule 1 C.P.C. On an application moved by the defendant-petitioner, the trial court vide order dated 17.05.2022, granted one more opportunity to the defendant-petitioner to file written statement by 30.05.2022. The

petitioner did not file written statement within the extended time. By its order dated 17.05.2022 and finally by order dated 05.07.2022 passed by the trial court, right to file written statement of the defendant-petitioner was closed. Thereafter, the evidence of the plaintiff was recorded. The counsel for the defendant-petitioner cross-examined the plaintiff-witnesses and subsequently filed an affidavit under Order XVIII Rule 4 of C.P.C. along with list of witnesses to lead evidence. He also filed the affidavit of his witnesses. The plaintiff opposed the leading of evidence by defendant-petitioner and filed an application dated 07.07.2025 being paper No. 49-Ga on the ground that since right to file written statement has been closed, defendant has no right to lead independent evidence. The said application filed by the plaintiff was allowed by the order impugned and the affidavits filed by the petitioner were directed to be returned to the petitioner. Hence the present writ petition.

3. Contention of learned counsel for the petitioner is that non-filing of the written statement does not render defendant the persona non grata in the eyes of the law, rather, the defendant retains the statutory and equitable right to participate in the trial, cross-examine witnesses of the plaintiff and address to demolish the case of the plaintiff on the basis of the material on record. It has been submitted by learned counsel for the petitioner, the right to demolish the plaintiff's case necessarily includes the right to lead evidence for the limited purpose of proving that the transactions sued upon is prohibited by statute and are void ab initio, as opposed to leading of evidence to prove factual "positive defense". It has been further submitted that the defendant-petitioner through the proposed evidence (which was returned by the impugned order) sought only to bring on record the material to demonstrate the suit agreement involves a transaction prohibited by the Income Tax Act and therefore, forbidden by law and opposed to public policy within the meaning of Section 23 of Indian Contract Act, 1872. Learned counsel also submitted that in a given set of circumstances, the defendant whose right to file written statement has been closed, can be permitted to lead evidence to demolish the case of the plaintiff. In this connection, learned counsel for

the petitioner relied upon the judgment of this Court in the case of **Pandit Gopi Charan Bajpai and others vs. Pandit Ram Prasad Awasti and others; 1957 SCC Online ALD 238.**

4. Before considering the submissions made by learned counsel for the petitioner, it would be useful to note the relevant provisions of the C.P.C. regarding right of defendant to file written statement as well as the right of the plaintiffs in case defendant fails to file the written statement.

5. Order IV, Rule 1 of C.P.C. provides, every suit shall be instituted by presenting (plaint in duplicate to the court) or such officer as it appoints in this behalf. Order V provides for issuance of summons when a suit has been duly instituted.

6. Order VIII provides for written statement. Rule 1 of Order VIII is quoted as under:-

"1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]"

7. Rule 10 of Order VIII provides for consequences when party fails to present written statement within a time limit. Rule 10 of Order VIII is quoted as under:-

"10. Procedure when party fails to present written statement called for by Court.—Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

8. It would also be relevant to look into the provisions of Order IX, Rules 6 and 7. Rules 6 and 7 of Order IX is quoted as under:-

"6. Procedure when only plaintiff appears.—(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

(a) When summons duly served.—if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte;]

(b) When summons not duly served.—if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time.—if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.—Where the Court has adjourned the hearing of the suit, ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance."

9. Elaborating his submissions, learned counsel for the petitioner submitted that in case written statement is not filed by the defendant in the suit, the court may proceed in accordance with Rule 10 of Order VIII C.P.C. Rule 10 of Order VIII C.P.C. provides where any party from whom a written statement is required fails to present the same, the court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit, and on the pronouncement of such judgment, a decree shall be drawn. It has been further submitted by learned counsel for the petitioner that the provisions of Rule 10 of Order VIII C.P.C. are not mandatory. The provisions of Rule 10 of Order VIII C.P.C. are enabling provisions, and in case the court does not pronounce the judgment against the defendant and passes an order otherwise, then the defendant will have a right to participate in the hearing of the proceedings. Right to participate in hearing will include right to cross-examine the witnesses of the plaintiff as well as right to lead evidence to

demonstrate the falsity of the plaintiff's case. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Ranjit Singh Vs. State of Uttarakhand and others, 2024 SCC Online SC 2932**. Learned counsel for the petitioner relied upon the observations made by the Hon'ble Supreme Court in paragraph No. 5 of the judgment, which is quoted as under:-

"5.....At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed ex-parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the law of limitation....."

10. It has been further submitted by learned counsel for the petitioner that once in absence of written statement, court has not proceeded to pronounce judgment in exercise of powers under Rule 10 of Order VIII C.P.C., the court can proceed against the defendant ex parte in exercise of powers under Order IX Rule 6 of C.P.C. Sub-rule (a) of Rule 6 of Order IX provides if it is proved that summons were duly served, the court can make an order that suit shall be heard ex parte, meaning thereby, the court will fix a date for ex parte evidence of the plaintiff to prove his case. Rule 7 of Order IX provides where the court has adjourned the hearing of the suit, ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court may direct as to costs or otherwise, be heard in answer to the suit as if he had appeared on the date fixed for his appearance. It has been further submitted, even if no application under Rule 7 of Order IX is made by the defendant, it has been interpreted by this Court as well as by Hon'ble Supreme Court and various other High Courts that the defendant can be permitted to appear and contest the proceedings even without filing the written statement. Once the defendant is permitted to contest the proceedings, which includes cross-examination of witnesses of the plaintiff, then there is no impediment in permitting the defendant to lead evidence to the effect that the suit filed by the plaintiff was not maintainable or was barred by law. He may not be permitted to lead evidence on the factual

aspect of the case, but he can always be permitted to lead evidence that the suit filed by the plaintiff as such was not maintainable. It has been further contended by learned counsel for the petitioner that in the present case, the evidence which was led by the petitioner, which has not been allowed, was to the effect that the suit filed by the plaintiff was barred under the provisions of Income Tax Act and therefore the court below has erred in law in rejecting the evidence filed by the petitioner.

There is no dispute to the proposition of law as argued by learned counsel for the petitioner to the extent that the defendant who has not filed the written statement can be permitted to participate in the proceedings where the proceedings are taken ex parte against him. He may also be permitted to cross-examine the plaintiff witnesses in case the evidence of the plaintiff witnesses is still to be recorded at the time when defendant choose to contest the proceedings by putting appearance in the suit. But whether this right will include to permit the defendant to lead evidence is a bit doubtful and has to be examined in the light of relevant statutory provisions as well as law as laid down by Hon'ble Supreme Court as well as by this Court and various other High Courts. And in this regard, it would be relevant to note the provisions of Order VI and Order VII.

11. Order VI defines "pleadings" which means plaint or written statement. Order VI Rule 1 and 2(1) are quoted as under:-

*"1. Pleading.—“Pleading” shall mean plaint or written statement.
2. Pleading to state material facts and not evidence.—(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved....."*

12. Rule 2 of Order VIII C.P.C. provides that in the written statement new facts must be specifically pleaded by the defendant. Rule 3 of Order VIII provides that defendant must deal specifically with each allegation of fact of which he does not admit the truth. Rule 5 of Order VIII further provides that in case any allegation of fact made in the plaint is not denied specifically or by necessary implication in the pleading of the defendant, shall be taken to be admitted. Rules 2, 3 and 5 of Order VIII are quoted as under:-

"2. New facts must be specially pleaded.—The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. Denial to be specific.—It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

5. Specific denial.—[(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:

(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 as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

13. From the bare reading of the provisions of C.P.C. quoted above, it is apparent that parties to the suit in their pleading has to state the material fact on which they rely and they are not supposed to plead the evidence by which they are to be proved.

14. The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules (relating to pleadings), was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on from trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side of hearing. To attain this end, the plaintiff should state in his plaint all the facts which constitute his cause of action. No amount of proof can substitute pleadings which are foundation of the claim of a litigating party. The defendant should also state in his written statement all the material facts on which he relies for his defence. When the result of the

pleading on both sides is that a material fact is firm on one side and denied on the other, the question thus raised between the parties is called an issue of fact. When one party answers his opponent's pleadings by stating an objection in point of law, the legal question thus raised between the parties is called an issue of law.

15. In case of **Siddik Mohamed Shah Vs. Mt. Saran and others; 1929 SCC Online PC 79**, the privy council has held it was a gift made by the widow herself but that claim was never made in the defence presented and the learned Judicial Commissioners therefore, very truly find that no amount of evidence can be looked into upon a plea which was never put forward.

16. In case of **Bachhaj Nahar vs Nilima Mandal and another; 2008 (17) SCC 491**, the Hon'ble Supreme Court held that no amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did not arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the court.

17. If a party omits to plead a material fact, he will not be allowed to give evidence on that fact at the trial unless the court gives him leave to amend his pleading under Rule 17 of Order VI C.P.C. In case there is no written statement in the suit, the defendant cannot be permitted to lead evidence of facts as there is no pleading. There cannot be any evidence in absence of pleading, therefore, the defendant cannot be permitted to lead evidence once he has been denied to file written statement.

18. In **Syed and Company and others Vs. State of Jammu and Kashmir and others: 1995 Supp (4) SCC 422**, in paragraph No. 10 of the judgment, Hon'ble Supreme Court has held as under:-

"10. We have carefully considered the above submissions. We are of the view that no exception could be taken to the judgment of the High Court. No doubt a prayer was made before the prescribed authority by the State requesting that a decree might be granted for the amount of price of timber extracted by the party. But that prayer alone was not enough. The pleadings ought to have been there as to what exactly was the basis of the prayer. We are afraid that the entire case of the State before the prescribed authority proceeded only with reference to royalty and interest thereof, but not with reference to the

price of the timber. It is true that in Malik Abdul Ahmad Shah Jalil Ahmad Akhtar AIR 1982 J & K 16 it has been held that the prescribed authority under Section 52 is empowered to determine the price of timber extracted. The State at that stage, should have amended the pleading and incorporated the basis for the claim for the price of timber. But for reasons best known the State merely took out an application under Order 41 Rule 27 to lead in evidence. Of course, evidence could have been allowed if there were pleadings to that effect. In this case, there was none. It is settled law that no evidence can be let in without the pleading. The High Court was fully justified in rejecting the application."

19. This Court in case of Abdul Jalil Vs. Jalil Beg and others: 2011

(7) ADJ 292 held in paragraph Nos. 11 and 12 as under:-

"11. Even though refusal to accept the written statement does not amount to striking off the defence still defendant cannot be permitted to adduce evidence for the reason that evidence can be adduced to prove the pleaded facts and in the absence of pleading (W.S), this exercise will be futile. No amount of evidence can be looked into unless there is corresponding pleading for the same.

12. Accordingly, impugned orders permitting the tenant to adduce evidence even though his written statement has been directed not to be taken on record/accepted are erroneous in law and without jurisdiction."

20. In case of Chuni Lal Chowdhry Vs. Bank of Baroda and others; AIR 1982 J& K 93, Jammu and Kashmir High Court has held in paragraph No. 3 as under:-

"3. On the authority of these observations, Rule 10 can be taken to relate to Rule 1 of Order 8 and on the defendant's failure to file written statement of his defence, when so required, the court has the power, either to pronounce the judgment against him or make such order in relation to the suit as it thinks fit depending upon whether the suit was for the final disposal or for the settlement of the issues only. In the latter case, the court has ample discretion to grant more time for filing the written statement or to proceed to hearing of the suit without such written statement. The discretion cannot, however, be exercised arbitrarily. In determining which course to adopt, the court will always be guided by the facts and circumstances of each case. Where the court decides to proceed to hearing of the suit without the written statement, that would not debar the defendant from taking part in further proceedings of the case. His participation would, however, be hedged in by several limitations. He will not be able either to cross-examine the plaintiff's witnesses or to produce his own evidence with regard to any questions of fact which he could have pleaded in the written statement. He will, however, be competent to cross-examine the plaintiff's witnesses in order to demolish their version of the plaintiff's case."

21. In case of Siai Sinha Vs. Shivadhari Sinha and others; AIR 1972 Pat 81, similar view has been taken by the Patna High Court.

22. In case of Sangram Singh Vs. Election Tribunal, Kotah and others; (1955) 1 SCC 323, the Hon'ble Supreme Court observed and held that 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 ex parte judgment and decree were passed and the defendant may not be permitted to file 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.

23. In case of **Modula India Vs. Kamakshya Singh Deo; 1988 (4) SCC 619**, the Supreme Court considered the scope and ambit of participation in a suit or proceedings by the defendant whose defense is struck off or who has not been permitted to file his written statement. Paragraph Nos. 18, 19, 20, 21 and 22 of the judgment in case of Modula India (supra) are quoted 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.

19. To us it appears that the basic principle that where a plaintiff comes to the court he must prove his case should not be whittled down even in a case where no defendant appears. It will at once be clear that to say that the Court can only do this by looking the plaintiff's evidence and pleadings supplemented by such questions as the court may consider necessary and to completely eliminate any type of assistance from the defendant in this task will place the court under a great handicap in discovering the truth or otherwise of the plaintiff's statements. For after all, the court on its own motion, can do very little to ascertain the truth or otherwise of the plaintiff's averments and it is only the opposite party that will be more familiar with the detailed facts of a particular case and that can assist the court in

pointing out defects, weaknesses, errors and inconsistencies of the plaintiff's case.

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, in spite 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 an 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 in spite 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."

24. Very recently, Hon'ble Supreme Court in case of **Kaushik Narsinhbhai Patel and others Vs. M/S. S.J.R. Prime Corporation Private Limited and others; (2024) 9 SCC 462** was considering the effect of its earlier order dated 11.08.2021 (Annexure No. P-18) wherein the Supreme Court permitted in a claim petition before the National Consumer Redressal Forum to proceed without the written statement of the respondent builder, but permitted the respondent builder to

participate in the proceedings. In the aforesaid case, contention was raised by the appellant that ignoring the order of Supreme Court dated 11.08.2021, National Consumer Disputes Redressal Commission virtually permitted the respondent to introduce facts to dispute their claims and complainants inasmuch as the opportunity offered to the first respondent by National Consumer Dispute Redressal Commission to file written submissions was utilized by the first respondent to introduce new facts to resist their claim and contentions. Such newly introduced facts and factors by the respondent through written submissions, obviously, weighed with the National Consumer Disputes Redressal Commission in adopting the formula followed in the impugned order for the purpose of computation of compensation payable to the complainants. Paragraph Nos. 15 to 18 and 20 to 26 of **Kaushik Narsinhbhai Patel (supra)** are quoted as under:-

"15. We will straight away verify the verity of the aforesaid contentions with reference to Annexure P-18 order dated 11.08.2021, firstly, to see whether the same was overreached and then, subject to its answer and consequences of its defiance. A bare perusal of Annexure P-21, which is the written submissions on behalf of the first respondent herein (opposite party therein) filed before the NCDRC and marked as such in this proceeding, without any peradventure would go to show that in and vide the said written submissions, the first respondent had introduced some pleadings to resist the claims and the contentions of the complainants in CC No.945 of 2019 and eventually, to offer its explanation for the delay in handing over possession of the flats. The raison d'être for our remarks would be unravelled by a mere perusal of Annexure P-21. Paragraph 3 thereof, opens thus: -

The complainants do not deserve any compensation as," (emphasis supplied)

16. Thenceforth, under para 3 (i) to 3 (iii), the respondents gave the reasons therefor. Through paragraph 4 of Annexure P-21, the respondent introduced further reasons to support its stand that the complainants do not deserve compensatory interest for the delay in handing over possession of flats. It is to be noted that even after taking a stand at paragraph 5 thereof that there was no delay at all from its part, the first respondent proceeded to explain the delay in paragraph 6. The statements made in the further paragraphs of Annexure P-21 also carry, either the case of the first respondent or its explanations/reasons to counter the claim of the complainants. To put it pithily, the first respondent, on being given the opportunity to file written submission, made use of it to make good its failure to file a written statement despite the fact that its right to file the same was declared as forfeited by this Court.

17. We are at a loss to understand as to how, such an opportunity could have been utilised by the first respondent in defiance to the specific directions of this Court under Annexure P-18 order and to file a written submission of such a nature. Under Annexure P-18 order, this Court declared that the first respondent had forfeited its right to file a written statement and then permitted, rather, directed to proceed further without the written statement of the first respondent-builder. True that even then its right to participate in the proceedings was protected, presumably, taking into account the position of law in that regard. We will deal with the scope of such permitted participation as also the consequence of the act of defiance of Annexure P-18 order depending on its degree of defiance and its impact. In doing so, we will have to keep reminded of the principle of law that what cannot be done directly, cannot be done indirectly.

18. The discussion as above, would take us to the next question as to what is the impact of forfeiture of opportunity to file written statement? We are fully aware of the fact that all the provisions in the Code of Civil Procedure, 1908, (for short 'the CPC') are not proprio vigore applicable to proceedings before Consumer Forums created under the Consumer Protection Act, 2019, except to the extent it is provided under Section 38 (9) of the Consumer Protection Act. Be that as it may, in the absence of specific provisions dealing with the consequence of forfeiture of the right to file a written statement, it is only appropriate to refer to the provisions and positions dealing with such situations in the CPC to know the general law on this question.

20. Thus, the position is that even if the defendant/opposite party failed to file a written statement and, in that matter, even if forfeiture of the right to file written statement has occasioned it would not disentitle that party from participating in the further proceedings, without filing a written statement and in such circumstances, the said party would also be having the right to cross-examine the witness(es), if any, of the plaintiff/complainant. 21. In the contextual situation, it is also appropriate to refer to Rule 1 & 2, Order VI of the CPC which reads thus:-

"Pleading. - "Pleading" shall mean the plaint or written statement." Rule 2, Order VI, in so far as, reads thus: -

"2. Pleading to state material facts and not evidence.--(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved."

22. The rigour of the rule of pleadings is evident from Rule 7 of Order VI, CPC, which mandates that:

"7. Departure-no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same".

23. In the context of the aforesaid provisions under the CPC, it is apt to refer to a decision of a Division Bench of the Karnataka High Court in *Nalini Sunder v. GV Sunder*. It was held therein that a party could not make out a case on the basis of evidence for which he/she has laid no foundation in the pleadings. It is fairly settled that no amount of evidence can prove a case of a party who had not set up the same in his/her pleadings, it was further held therein.

24. According to us, it is the correct proposition of law. In the absence of any specific provisions dealing with non-filing of written statements/forfeiture of the right to file a written statement, taking note of the general position as above, it can only be held that it should bar the opposite party in a proceeding before the Consumer Redressal Forums to bring in pleadings, indirectly to introduce its/his case and evidence to support such case. In the situations mentioned above, the right of the opposite party is confined to participate in the proceedings without filing a written statement and to cross-examine witness(es), if any, examined by the complainant(s).

25. It being the position of law, the first respondent who is bound by Annexure P- 18 order could not have been permitted to introduce its case to defend the case of the complainants through written submissions though it was rightly permitted to participate in the proceedings. There is no case for the first respondent that it sought permission to cross- examine Kaushik Narsinhbhai Patel who filed affidavit of evidence and produced documentary evidence. At any rate, no such case was put forth by the first respondent and no grievance of denial of such opportunity was also raised.

26. In the circumstances expatiated above, in view of Annexure P-18 order the reply and objection filed by the first respondent herein in this proceeding also cannot be looked to the extent it carries pleadings relating its case, the reasons and objections which could have been let in through a written statement. In short, the first respondent could be permitted only to argue the legal questions arising based on authorities and provisions of law as also regarding lapses or laches and the consequential non-admissibility or otherwise of evidence, let in by the appellants."

25. Learned counsel for the petitioner relied upon paragraph No. 15 of the judgment in case of **Pandit Gopicharan Bajpai (supra)**, which is quoted as under:-

"15. As I have pointed out above, a party has the right to lead evidence on the issues framed in the case even though there has been an order, earlier in the case, to the effect that proceedings in the case would be 'ex parte', provided of course there has not been an 'ex parte' decree already."

26. I have perused the judgment passed by this Court in case of Pandit Gopicharan Bajpai (supra). This Court was considering an order passed by the trial court rejecting the application filed by the revisionist for permitting him to file written statement. This Court allowed the revision partly and permitted the defendant-revisionist for appearing at the trial and leading evidence. Though, certain observations have been made by this Court in the aforesaid judgment, but in view of the law laid down by the Privy Council, the Supreme Court, this Court and various other High Courts, I find myself unable to persuade to the contention made by the petitioner that even where the defendant has been denied the right to file written statement, can be permitted to lead evidence.

Since there are no pleadings in case written statement is not filed by the defendant, evidence cannot be led on the issues framed in absence of pleadings.

27. In view of the discussions made above, I am of the view that court below has not committed any illegality in rejecting the evidence filed by the petitioner as the right to file written statement of the defendant was closed and there was no pleading regarding the evidence sought to be adduced by the petitioner. In this case, petitioner has been permitted to cross-examine the witnesses adduced by the plaintiff and in my view, beyond that, permission cannot be granted to the petitioner to lead evidence for want of pleadings.

28. Accordingly, the petition fails and is **dismissed**.

(Manish Kumar Nigam,J.)

July 1, 2026
Nitika Sri.