

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.15539 of 2009

Gopal Prasad Gupta

....

Petitioner

Mr.G.Mukherji,
Advocate

-versus-

M/s. Jalan Paper Mills

....

Opposite Party(s)

Pvt.Ltd.

Mr.G.P.Dutta Advocate

Mr.R.P.Mohapatra, AGA

CORAM:

JUSTICE BISWANATH RATH

ORDER

17.02.2022

Order No.

04

1. Heard learned counsel appearing for the parties. In spite of notice and appearance of a set of counsel, there is no appearance on behalf of the Company.
2. Taking this Court to the prayer in Annexure-2, learned counsel appearing for the petitioner submits that since the matter involved exemption of court fee on the premises of no income being earned by the petitioner-company at the time of filing of the suit and as the matter involves exemption of court fee, for the interest of justice, in the minimum State should have been heard in the matter of exemption of court fee. For non-consideration of such issue by the trial court in the disposal of application vide Annexure-2, petitioner claims interference of this Court in the order at Annexure-3 and passing appropriate order.

3. Mr.Mohapatra, learned Additional Government Advocate however taking this Court to the observation of the trial court in passing order exempting payment of court fee vide order dated 8.8.2002 brought to the notice of the Court that even though the petitioner sought for exemption of court fee, there is temporary exemption of court fee however with a rider in the event of success in the suit, the court fee required shall be realized from the plaintiff. It is in this view of the matter, Mr.Mohapatra, learned Additional Government Advocate though did not dispute the question raised by the petitioner in deciding such matters in absence of State but however for the nature of the order and having a scope for realization of court fee in the event success of the plaintiff in the suit, objected to the move involving the writ petition.

4. Considering the rival contentions of the parties, this Court finds there is glaring defect in considering exemption of court fee issue and taking such decision in absence of the State, which will be the ultimate loser. This Court again finds in the event the plaintiff loses, though he is required to pay the court fee taking the advantage of exemption and for the end order to realize the court fee in the event of succeeds in the suit, for the opinion of this Court ultimately there is no payment of court fee even the suit is dismissed. This Court even nowhere finds if at all plaintiff has filed any proof presently the case as a pauper. It is keeping in view and as heavy court fee is required in maintaining such suit, this Court in interfering the order at Annexure-1 and 3, remits the matter back to the trial court to involve the suit so far the dispute relates to exemption of court fee and deciding the matter with the participation of the State in the matter of exemption of court fee required by the plaintiff. Trial court is also to see if there has been attachment of certificate of no income of the competent authority in making such claim.

5. Interim order dated 21.10.2009 passed in Misc. Case No.13427 of 2009 stands vacated.

6. Parties are directed to bring the certified copy of this order to the notice of the trial Court on 10th of March and the trial court shall take up the matter involving exemption of court fee before proceeding in the suit.

7. The writ petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)

Judge

Sks

