

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15954 of 2005

M/s. National Aluminium Company Ltd.

Petitioner(s)

Mr. B.K. Sharma,
Advocate

-versus-

M/s. Chaitanya Powerlines Pvt. Ltd. & another

Opposite Party(s)

Mr. S. Lal,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
17.10.2022**

Order No.

14. 1. This writ petition involves a challenge to the order allowing an application U/o.7 rule 11 of C.P.C. by the trial court thereby taking out the effect of the Money Suit No.87 of 2002 (No.255 of 1995) so far it relates to one of the defendant therein.
2. Mr. Sharma, learned Counsel for the Petitioner taking this Court to the findings in allowing the application U/o.7 Rule 11 of C.P.C. contended that the trial court proceeded relying on a wrong provision of law to the case at hand. Taking this Court to the provision at Section 10 of the Carriers Act, 1865 Mr. Sharma, learned counsel for the Petitioner contended that the provision at Section 10 of the Carriers Act, 1865 has no application to the case at hand, as there is no allegation of loss or injury involving claim in the Money Suit.

It is, in the circumstance, Mr. Sharma, learned counsel for the Petitioner prayed this Court for interfering in the impugned order and setting aside the same.

3. Learned counsel for the contesting Opposite Party, on the other hand, submits that the application U/o.7 Rule 11 of C.P.C. is not only on the basis of the provision at Section 10 of the Carriers Act, 1865, the application U/o.7 Rule 11 of the C.P.C has also been allowed on the premises of survival no cause of action. Learned counsel thus claims that there is no infirmity in the impugned order requiring to be interfered with.

4. Considering the rival contentions of the parties and for the involvement of vital question; if at all there was application of the provision at U/s.10 of the Carriers Act, 1865 to the case at hand? this Court reading through the provision finds as follows:-

“10. Notice of loss or injury to be given within six months.- No suit shall be instituted against a common carrier for the loss of, or injury to [goods (including container, pallets or similar article of transport used to consolidate goods) entrusted} to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.]

5. Reading the aforesaid provision this Court nowhere finds, any such contingency involving the suit proceeding. This Court, therefore, observes, there is wrong application of the provision in deciding the proceeding U/o.7 Rule 11 of C.P.C.

6. Considering from the point of view also involved in the impugned decision as to whether suit having any cause of action or not?, Considering the rival contentions of the parties, this Court is of the view that whether the suit has a cause of action or not, is a mixed question of fact and law and the same cannot be decided through the application U/o.7 Rule 11 of C.P.C. by way of preliminary issue. It is on both the above counts, this Court interfering in the impugned order

at Annexure-4, sets aside the same thereby restoring the Money Suit No.87 of 2002 (No.255 of 1995) fully.

8. Since the matter is decided on contest of both the parties, both the parties in contest are directed to appear before the competent authority along with a copy of this order on 10th November, 2022. Suit will be recommenced and to be decided on merit, but however, involving all the defendants.

9. This Writ Petition stands disposed of with the above order.

(Biswanath Rath)
Judge

