

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 62 OF 2018

Akhaya Kumar Jena

.... Petitioner

Mr. Budhiram Das, Advocate

-versus-

Puspalata Rout and another

.... Opp. Parties

Ms. Mamata Mishra, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.11.2022

Order No.

**I.A. No.257 of 2021, I.A. No.1095 of 2022
& CMP No.62 of 2018**

5. 1. This matter is taken up through hybrid mode.
2. I.A. No.257 of 2021 has been filed for extension of the interim order and I.A. No.1095 of 2022 has been filed for fixing an early date of hearing.
3. In course of hearing of the aforesaid interim applications, learned counsel for the parties pray for final disposal of the CMP on merit. Hence, the CMP is taken up for final disposal.
4. This CMP has been filed assailing the orders dated 8th November, 2011 (Annexure-1) passed by learned Senior Civil Judge, Kendrapara in T.S. No.146 of 1994, rejecting an application filed by the Petitioner under Order IX Rule 7 C.P.C. and to accept his written statement as well as the order dated 5th December, 2017 (Annexure-4) passed by learned Additional District Judge, Kendrapara in Civil Revision No.06 of 2011 dismissing the revision.

5. Mr. Das, learned counsel submits that the Petitioner is Defendant No.17 in the suit, which is filed for declaration of right, title and interest by the Opposite Parties. Due to some inadvertent reasons, the Petitioner could not file the written statement earlier, although other Defendants have filed their respective written statement. However, during pendency of the suit, Defendant No.17 filed an application under Order IX Rule 7 C.P.C. along with the written statement to set aside the *ex parte* order and to accept the written statement. The said application was rejected vide order dated 8th November, 2011 under Annexure-1 by learned Senior Civil Judge, Kendrapara. He further submits that as the Plaintiff No.1 has only been examined in the suit, there was no difficulty on the part of learned trial Court to accept the written statement and permit him to contest the suit. By rejecting his application under Order IX Rule 7 C.P.C., learned trial Court deprived the Petitioner from contesting the suit on merit. Hence, this CMP has been filed.

6. Ms. Mishra, learned counsel for the Plaintiffs-Opposite Parties submits that due to non-filing of the written statement, the Petitioner was set *ex parte* and was precluded from filing of the written statement. The suit is of the year, 1994. The application under Order IX Rule 7 C.P.C. was filed after eleven years from the date of filing of the suit. By that time, the Plaintiff No.1 had already been examined and cross-examined. Thus, learned trial Court has committed no error in rejecting the application under Order IX Rule 7 C.P.C., as trial has already commenced in the suit. Assailing the same, the Defendant

No.17-Petitioner had filed Civil Revision No.06 of 2011, which has rightly been dismissed vide order dated 5th December, 2017 by learned Additional District Judge, Kendrapara, as not maintainable. Hence, she prays for dismissal of the CMP.

7. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the record, it appears that the Defendant No.17-Petitioner could not file the written statement within the time stipulated. Subsequently, on 25th July, 2011 after obtaining documenta, the Petitioner filed an application under Order IX Rule 7 C.P.C. along with written statement to set aside the *ex parte* order and to file the written statement. The Hon'ble Supreme Court in the case of **Arjun Singh –v- Mohindra Kumar and others**, reported in AIR 1964 SC 993 has categorically held that, even if, an application under Order IX Rule 7 C.P.C. is allowed, the Defendant cannot be relegated to the position prior to the date of hearing. Hence, learned trial Court has committed no error in rejecting the application under Order IX Rule 7 C.P.C. and accepting the written statement of Defendant No.17 (present Petitioner). It further appears that assailing the said order, the Petitioner had preferred Civil Revision No.6 of 2011, which has been dismissed by learned Additional District Judge, Kendrapara vide order dated 5th December, 2017 holding the civil revision to be not maintainable. I find no infirmity in the order under Annexure-4 also.

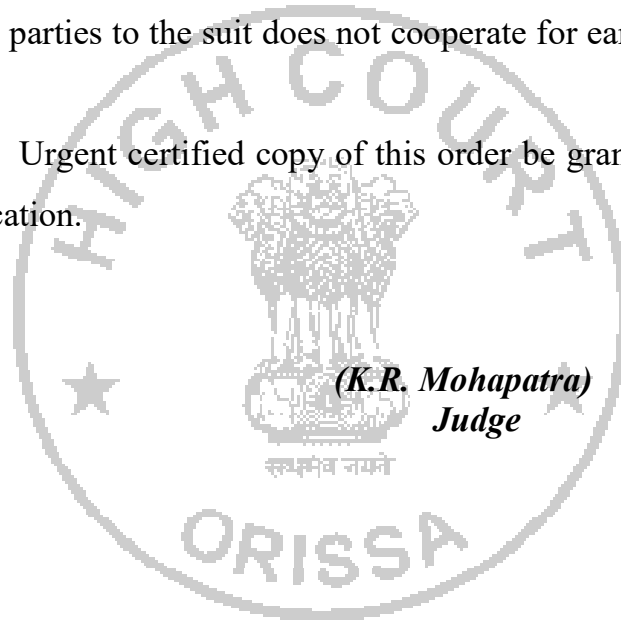
8. In view of the above, I find no infirmity in the impugned orders under Annexures-1 and 4. Accordingly, this CMP stands

dismissed being devoid of any merit. The I.As are also disposed of accordingly.

9. Since the suit is of the year, 1994, learned trial Court shall do well to make an endeavour for early disposal of the same, if necessary by adhering to the procedure provided under Order XVII Rule 1 C.P.C. Parties are directed to cooperate with learned trial Court for early disposal of the suit.

10. Needless to mention here that learned trial Court is at liberty to take coercive measure in accordance with law, if any of the parties to the suit does not cooperate for early disposal of suit.

Urgent certified copy of this order be granted on proper application.



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