

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.13473 of 2003

Shyam Sundar Brahmachari

....

Petitioner(s)

Mr.Ramakanta Mohanty,
Sr.Advocate

-versus-

Prahallad Patra & Ors.

....

Opposite Party(s)

Mr.U.K.Sahoo, ASC
Mr.A.K.Mishra, Advocate
for O.P.Nos.1 to 3.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
08.07.2022**

Order No.

8.

1. Heard learned counsel appearing for the parties.
2. In the threshold, the writ petition involves rejection of Misc. Case No.223 of 1997 for restoration of Revision Petition No.672 of 1990. Petitioner's Misc. Case No. 24 of 2003 was moved for restoration of Misc. Case No.223 of 1997. Mr.Mohanty, learned Senior Counsel taking this Court to the cause title and the manner of disposal in Annexure-1 submits that there is no doubt that there was no appearance on behalf of the petitioner in presenting the miscellaneous cases placed for consideration. It is urged that in the event there would have been appearance on behalf of the petitioner, he would have been in a position to explain the situation in making such demand. It is in this scenario, Mr.Mohanty, learned Senior Counsel urged indulgence of the Court in the order at Annexure-1 thereby restoring the Revision No.672 of 1990

to afford opportunity to the parties to contest to have a decision in the revision on contest.

3. Learned counsel appearing for the private opposite parties however in support of the order at Annexure-1 submits that since the applications involved were all filed by the petitioner, it becomes responsibility of the petitioner to pursue his remedy and for non-appearance of the petitioner, there should not any blame on the competent authority concerned. Taking this Court to the discussions in Annexure-1, learned counsel appearing for the private opposite parties also taking this Court also to the reasoning therein submitted that in any case the Commissioner has decided both the Misc. Cases taking into account the pleadings and materials available on record. Learned counsel for the private opposite parties thus objects to the entertainability of the writ petition.

4. Mr.Sahoo, learned State Counsel appearing for the State-opposite parties supports the stand of counsel for the private opposite parties.

5. Considering the rival contentions of the parties, this Court finds undisputedly for dismissal of the Revision Case No.672 of 1990 for default on 01.06.1994, Misc. Case No.223 of 1997 was filed for restoration of the revision on the ground of illness. This Court similarly finds this Misc. Case having been dismissed again for default, petitioner was constrained to file Misc. Case No.24 of 2003 for restoration of Misc. Case No.223 of 1997. This application again is moved on the ground of self illness. Looking to the cause title at page- 10 of the brief

at Annexure-1, the impugned order, this Court finds there was no appearance either on the petitioner side or on the opposite party side and the authority himself determined the matter. For the opinion of this Court, in the event there would have been participation of the petitioner, he would have been in a position at least to satisfy the authority reason obstructing him for his appearance in either hearing of the revision or even hearing of the Miscellaneous Applications.

6. Be that as it may, there remains no doubt that the order at Annexure-1 is an ex parte order. Considering the nature of litigation involved, proceeding under Section 37(1) of the O.C.H. & P.F.L. Act, 1972 ought to be decided in the involvement of the parties. In the interest of justice, the party should get an opportunity of placing their case involving the revision itself. As there is no point in restoring only Misc. Case No.24 of 2003 and again asking parties to face the further litigation involving Misc. Case No.223 of 1997, to avoid further loss of time to both side, this Court interferes in the order at Annexure-1 thereby allows Misc. Case No. 24 of 2003 and as a consequence also Misc. Case No.223 of 1997 directing for restoration of revision Case No.672 of 1990.

7. Considering there is considerable loss of time in the meantime over three decades from the date of institution of revision petition in the year 1990 and there has been unnecessary litigations to several courts including that to High Court. For unnecessary issues, forcing the private Opposite Parties to wait in Court unnecessarily and for no fault

of him this Court imposes a cost of Rs.5,000/- (Rupees five thousand only) on the petitioner to be paid to the private opposite parties, as undertaken to be paid in this Court within a week hence to the counsel appearing for the private opposite parties.

8. Consequently, the writ petition succeeds thereby restoring R.C.No.672 of 1990. Since the matter is decided on contest, upon filing of certified copy of this order along with receipt showing payment of cost, as directed hereinabove, within a period of ten days hence, the revision petition will be taken for re-disposal on merit and involving the parties concerned. Since the writ petition is disposed of in the participation of all parties to the revision petition, both petitioner and opposite party nos.1 to 3 are directed to appear before the Commissioner, Consolidation, Cuttack on 18.07.2022 and take the further date of hearing of the R.C.No.672 of 1990.

(Biswanath Rath)
Judge