

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C).No. 18213 OF 2009

Nisamani Dei @ Naik

....

Petitioner(s)
Mr.S.Mohanty,
Advocate

-versus-

*Krushna Chandra Jena
& Ors.*

....

Opposite Party(s)
Ms.S.Priyadarshine,
Advocate
(O.P.Nos.2 3)

CORAM:

JUSTICE BISWANATH RATH

ORDER

09.09.2022

Order No.

15.

1. Heard the submission of Mr.Mohanty, learned counsel for the petitioner. In spite of appearance of opposite party nos..1, 2 and 3, nobody is present in Court. Even though this Court finds there is no service of notice on opposite party nos.4(a) and 4(b), for there is already service of notice on the other L.Rs. and as this Court finds there is substantial representation taking care of the case of opposite party no.4 through opposite party nos.2 and 3 already made their appearance, this Court finds there is substantial representation and thus there is no technical bar in undertaking the hearing exercise.

2. This writ petition involves dismissal of request of petitioner in restoration of the suit dismissed for non-prosecution. Basing on ex-parte dismissal of the suit, plaintiff approached the trial court under Order 9 Rule 4 of the Code of Civil Procedure registered as Misc. Case No.374 of 2001. Taking to the pleading in paragraph-2, Mr.Mohanty, learned counsel for the petitioner contended that for the suffering from fever, petitioner being one of the plaintiff, who was looking after the case on behalf of others, in between 5.8.2001 till 10.8.2001 was unable to attend the Court proceeding. Thus, there is willful

abscontism requiring the suit to be dismissed. The application under Order 9 Rule 4 of the Code of Civil Procedure has been brought on 6.9.2001 within the prescribed period of limitation. Mr.Mohanty, learned counsel alleged that for the single default of the petitioner taken together with the petitioner was prevented otherwise from appearing on the fixed date and thus claims in such event the court should have in the interest of justice instead of dismissing the suit for non-prosecution should have adjourned the matter at least for one more day. In the circumstance and for the petitioner suffering at the relevant point of time, Mr.Mohanty, learned counsel requested this Court for interfering in the impugned order at Annexure-1. In spite of service of notice, nobody is appearing for the contesting opposite parties.

3. Perusal of the pleadings of the plaintiffs in paragraph-2 of the application available at Annexure-3, page 25 of the brief, this Court finds petitioner has a clear case of illness of petitioner-plaintiff no.1 therein who was stated to be looking after the case. Further, this Court finds there involves single default. Looking to the nature of the case, in the interest of justice, the matter should have been deferred for one date at least. Finding unreasoned order in dismissal of the suit, this Court while interfering in the impugned order at Annexure-1 dated 22.02.2022, sets aside the same and remits the matter back to the Civil Judge (Junior Division, Jagatsinghpur for entering into trial involving the parties involved herein, if necessary, by issuing fresh notice to such defendants to avoid repetition of such non-appearance. This Court however for unnecessary burdening the courts including trial court, appellate court again High Court involving in proceedings for the own fault of the petitioner-plaintiff, this Court imposes a cost of Rs.2,000/- (rupees two thousand) to be deposited before the Red cross Fund. This Court makes it clear that for there is reasonable disposal of the

appeal by the District Judge, there is no requirement of entering in such order. Petitioner is directed to appear before the trial court along with receipt showing deposit of cost in the office of particular Collectorate on 26.09.2022 along with certified copy of this order enabling the trial court to proceed in accordance with law.

4. In the result the writ petition succeeds but however with cost.

(Biswanath Rath)
Judge

sks

