

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.29929 of 2011

Bajel Majhi & Ors.

....

Petitioners

Mr. S. Misra,
Advocate

-versus-

Mairum Bibi & Ors.

....

Opposite Parties

Mr. B. Baug,
Adv. for O.Ps.2 to 4

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
23.03.2022**

Order No.

09. 1. This matter involves rejection of an application U/s.237 & 138 of the Indian Evidence Act read with Section 151 of C.P.C. at the instance of the Defendant No.1 to recall his own witness to give a clarification to the cross examination at particular place clearly indicated in the said application. On receipt of the application there is serious objection vide Annexure-3. The application involved was considered and rejected on contest.
2. Assailing the impugned order Mr. Mishra, learned counsel for Petitioner taking this Court to the written statement averments vis-à-vis the relevant cross examination portion contended that for the clear statement in the pleadings in the written statement, there appears, there has been wrong recording by the Court in the cross examination involving the D.W.1 and by the application involved in the impugned order there is attempt to only correct the mistake and

the correction was also sought for in the line of the pleadings in the written statement. It is also claimed that the D.W.1 himself is the defendant no.1.

In the circumstance and for there is correction of mistake in the line of the written statement pleadings, a claim is also made that there should have been allowing of the application for effective adjudication of the dispute.

2. To the contrary Mr. Baug, learned counsel for the Opposite Parties taking this Court to the cause title of the plaint and further also clear pleading averments claiming Paduriddin and Pachhuruddin are one and same, claimed that in the event of allowing of such application, there is likelihood of affecting the claim of the Opposite Parties and in the process an attempt is also made by the Opposite Parties to defend the impugned order.

3. Considering the rival contentions of the parties this Court finds, undisputedly the defendants have clear pleading involving the positioning of the Paduriddin and Pachhuruddin, however in course of examination there appears, there is recording contrary to the pleadings in the written statement. It is, at this stage of the matter, this Court finds, the plaintiffs have to succeed on their own leg and cannot bank on any bona fide mistake committed and/or unintentional mistake in course of evidence. Further looking to the nature of discrepancy and the time within which the application is made to make necessary correction, this Court finds, there appears to be a reasonable ground and attempt and there is timely approach. Further looking to the nature of mistake claimed to have occurred in course of cross examination and also looking to the pleadings in the

written statement of same party remaining contrary, this Court finds, there is no serious prejudice in allowing such correction. In the result, this Court while interfering in the impugned order, allows the application vide Annexure-2. It is, at this stage of the matter, considering the claim of the Opposite Parties that since this Court has allowed re-examination of the D.W.1, the plaintiffs may be permitted to have further cross examination, if any, this Court finds, there is genuine prayer and directs, in the event the Plaintiffs apply for the same, such an opportunity would be provided to them. This Court since finds, the Plaintiffs are suffering for no fault of them on interfering in the impugned order and setting aside the same, this Court directs for payment of a cost of Rs.1,500/- (rupees one thousand five hundred) to the plaintiffs. Let D.1 pay a sum of Rs.1,500/- (rupees one thousand five hundred) to the Plaintiffs in the trial court within a period of ten days and file receipt accordingly.

4. The writ petition succeeds, but with award of cost indicated hereinabove.

(Biswanath Rath)
Judge