

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.19045 of 2008

Antaryami Rout

....

Petitioner(s)

Mr.S.K.Pattnaik,
Advocate

-versus-

Laxminarayan & Ors.

....

Opposite Party(s)

Mr.G.R.Varma,Adv.
For O.P.No.3
Mr.B.C.Singh, Adv
For O.P.No.4

CORAM:
JUSTICE BISWANATH RATH

ORDER
13.04.2022

Order No.

11.

1. Heard the submission of the parties.
2. In spite of set of counsel appearing for Opposite Party No.3, as Defendant No.3 is likely to be affected in the involvement of the dispute, nobody is available in the hearing of the matter.
3. Learned counsel for the Petitioner taking this Court to the Application filed by the defendant No.3 vide Annexure-2 contended that the Application sought for taking out the defendant No.3 from the suit purview only on the contentions that there has been no claim involving such party. Plaintiff in its objection to application under Order 1 Rule 10 of C.P.C. had very clearly objected the move to drop Defendant No.3.
4. Taking this Court to the impugned order at Annexure-4, learned counsel appearing for the petitioner, the plaintiff, urged, there is absolutely no consideration of the objection of the petitioner in respect of his claim based on clear averments in Paragraphs-9 & 10 of the plaint, further also relevant part and therefore learned counsel

claimed for interference in the impugned order for involving a bad consideration. Nobody is appearing for the contesting Defendant No.3/ opposite party No.3.

5. Considering the submission of learned counsel for the petitioner and reading through the plaint involving Civil Suit No. 207 of 2007, this Court finds, the plaintiff has not only made opposite party No.3 being defendant No.3 but even in so many paragraphs particularly in Paragraphs-9,10 and 11, pleaded as follows:-

“That, in this way the defendant No.1 could be able to convince the Plaintiff with ill intention to which the Plaintiff believed and accordingly the Plaintiff and defendant No.1 proceeded to Kalinga Automobile Pvt. Ltd., Bhubaneswar on dated 15.1.01 and discussed about their proposal with one Rajendra Jena in the said office and as per his advise and instruction, the Plaintiff deposited a sum of Rs.1,00,000/- (Rupees one lakh) only with the defendant No.3 by Demand Draft vide D.D. No.047414 on dtd. 27.1.2001 through State Bank of India, Chandpur Branch, Chandput, Dist. Nayagarh.

That, after deposit of Rs.1,00,000/- with the defendant No.3 to purchase Ambassador Car on loan, the defendant No.1 further diverted the Plaintiff by proposing the purpose a passenger vehicle like Mini Bus, which would give more profits than an ambassador car. The plaintiff being a simple men agreed with the proposal of the defendant No.1 (one).

That, thereafter the defendant No.1 (one) talked with the defendant No.3 to have a Mini Bus instead of Ambassador Car and accordingly while preparing requisite documents for availing the loan for Mini Bus, Financier Madhukan Financial services Ltd., wanted Collateral security from the Plaintiff but the Plaintiff being a Yogi could not be able to furnish Collateral security to the Financier for which the defendant No.1 taking advantage of such inability of the Plaintiff in furnishing Collateral security with the Financier (Deft. No.2) persuaded the Plaintiff with an ill motive that if the vehicles would be purchased in his name as borrower then he could be able to arrange collateral security for him”.

There are some pleadings involving Defendant No.3 in Paragraph-13 of the plaint also. It is at this stage, this Court also considers the objection of the plaintiff vide Annexure-3 and finds, the plaintiff specifically urged to have a claim against this defendant No.3. On perusing the impugned order, this Court finds, there has been

absolutely no discussion on the pleadings of plaintiff in Paragraphs-9, 10, 11 and 13 and thus finds, the observations of the trial court in allowing the Application under Order 1 Rule 10 of C.P.C. vide Annexure-4 remains completely contrary to the plaint pleadings and the objection so raised by the plaintiff more particularly in the circumstance, this Court interfering with the impugned order at Annexure-4 sets aside the same and rejects the Order 1 Rule 10 of C.P.C. Application.

6. The Writ Petition succeeds.

7. Interim order dated 09.09.2009 passed in Misc. Case No.16070 of 2008 stands vacated. Trial involving C.S. No.207 of 2007 pending before the Civil Judge, Khordha is directed to be concluded within a period of six months from the date of communication of this order.

(Biswanath Rath)
Judge

