

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.51 OF 2022

Niranjan Biswal & anr.

....

Petitioners

Mr.A.P.Bose, Adv.

-versus-

Sridhar Sahoo

....

Opposite Party(s)

Mr.M.M.Patnaik, Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
16.3.2022**

Order No.

03.

1. Heard learned counsel for the Parties.
2. The CMP involves a challenge to the rejection of an Application under Order 9 Rule 7 of C.P.C. at the instance of the Defendants on their coming to be ex parte by the trial court.
3. There is no dispute in the dates taking place in the meantime, such as by order dated 11.9.2017 the trial court made the Defendants ex parte for their not filing written statement in time. Taking plea of ignorance and the reason in delay in filing written statement, the Application under Order 9 Rule 7 of C.P.C. being moved was seriously objected by the Plaintiff. Finally by order dated 12.4.2019 the trial court being dissatisfied with the reasons in making such approach with inordinate delay has come to reject the Application

under Order 9 Rule 7 of C.P.C., vide its order dated 18.12.2021 involving the Application under Order 9 Rule 7 of C.P.C. filed on 12.4.2019.

4. Learned counsel for the Petitioners taking the pleas taken in the CMP as well as the plea in the Application under Order 9 Rule 7 of C.P.C. for their bringing to the notice of the stage of the suit submitted that trial is already commenced and P.W.1 already examined, learned counsel for the Petitioners contended that for the settled position of law requiring all attempts by the trial court to give a contest judgment and decree and in the event there was any difficulty on the part of the Plaintiff on setting aside the ex parte order involved therein, nothing prevented the trial court to allow such Application on grant of cost. It is keeping in view that the Defendants are prohibited from having a contest, decision involving nature of the suit involved, learned counsel for the Petitioners prayed this Court for interfering with the impugned order and passing appropriate order.

5. Learned counsel for the Plaintiff, however while objecting the request of the learned counsel for the Defendants brought to the notice of this Court that the Defendants were set ex parte on 11.9.2017 and the Application under Order 9 Rule 7 of C.P.C. for

setting aside should have come at least within a reasonable period. Further once the Defendants knew that they have been set ex parte for their non-filing of written statement, delay, if any, explained through such application even is not proper and reasonable. Taking to the observation of the trial court in rejection of the application involved, an attempt is made by the learned counsel for the Plaintiff to satisfy this Court that the impugned order is justified and thus requested this Court not to interfere with the impugned order thereby dismissing the CMP.

6. Considering the rival contentions of the Parties, this Court finds, there is no dispute that the Defendants were set ex parte for their not filing written statement in due time. Even though there has been time stipulation in the amended provision of the Civil Procedure Code requiring written statement to be filed in time, yet there has been change in the position by virtue of decision of the Hon'ble apex Court as well as this Court expanding filing of written statement but however for the reasonable circumstance. This Court here considering the rival contentions of the Parties finds that the Defendants were set ex parte on 11.9.2017. The Application under Order 9 Rule 7 of C.P.C. along with application to accept the written statement came to be filed on 12.4.2019. There is

undisputedly delay of more than one and half years in bringing such Application. Further there is also commencement of trial to the extent completion of examination of P.W.1. During the pendency of the CMP, there is again loss of almost 5 years. It is at this stage of the matter, looking to the settled position of law again requiring closure of the suit on contest of the Parties and to avoid the ex parte judgment and decree to avoid multiplicity of litigations and unnecessary litigations, this Court looking to the stage of P.W.1 already examined finds, in the event there is interfering in the ex parte order involving the Defendants, there would be definite prejudice to the Plaintiff for sustaining of huge loss of time in the meantime. Keeping in view the above, this Court finds, in allowing the Defendants to have a contest on disposal of the suit, it is also required to look to the prejudice and suffering of the Plaintiff.

7. Keeping the above in view, while deprecating the manner of disposal of Application under Order 9 Rule 7 of C.P.C., this Court while interfering with the impugned order at Annexure-1, setting aside the same and allowing the Application under Order 9 Rule 7 of C.P.C. at the instance of the Defendants directs the trial court to accept the written statement, which is already on Board along with the Application under Order 9 Rule 7 of C.P.C., subject to however

payment of cost of Rs.5,000/- (rupees five thousand) to be paid to the Plaintiff at least within a period of fifteen days, as undertaken. Copy of this order along with the receipt of payment of cost being filed, the written statement will be accepted. Considering that there is already examination of P.W.1, in the event of any application filed by either of the Parties for chief and/or cross-examination dependent on the written statement plea, the trial court shall do well in recalling such witnesses and providing the Parties applying opportunity of chief and/or cross-examination.

8. The CMP stands disposed of with the above order.

M.K.Rout

(Biswanath Rath)
Judge

