

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 27749 OF 2011

Siba Prasad Dash

....

Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

Gyanendranath Singh and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.12.2022

Order No.

8. 1. This matter is taken up through hybrid mode.
2. Consolidated cause title filed by learned counsel for the Petitioner is taken on record.
3. This writ petition has been filed assailing the order dated 29th September, 2011 (Annexure-7) passed by learned 2nd Additional Civil Judge (Senior Division), Cuttack in T.S. No.20 of 2003, whereby an application filed by the Plaintiffs-Petitioners for expunging the evidence of D.W.1 has been dismissed for non-prosecution.
3. Mr. Bose, learned counsel for the Plaintiff-Petitioner submits that after closure of the evidence of the Plaintiff, D.W.1 was examined in chief. But, he did not make himself available for further cross-examination by the Plaintiff. As such, an application was filed on 29th July, 2011 to expunge the evidence of D.W.1. The said application was heard on 12th August, 2011 and the matter was posted to 20th August, 2011 for delivery of orders. However, on the said date, the order was not ready as

further clarification on the point of law was required by the Court. Thereafter, the matter was adjourned to different dates and ultimately on 29th September, 2011, the petition was dismissed for non-prosecution.

4. It is submitted by learned counsel for the Petitioners that since hearing of the petition was complete on 12th August, 2011 and it was posted to 20th August, 2011 for clarification on certain point of law, the petition could not have dismissed for non-prosecution. Dismissal of such petition for non-prosecution is an abuse of process of Court. Learned trial Court should have passed the order on merit in the said petition. He, therefore, prays for setting aside the impugned order under Annexure-4 and due to lapse of time in the meantime, Mr. Bose, learned counsel for the Petitioner prays for a direction to learned trial Court for fresh consideration of the petition dated 29th July, 2011.

5. Learned counsel for the Opposite Parties submits that they have no instruction in the matter and left the Court at the time of hearing of the writ petition.

6. Upon hearing Mr. Bose, learned counsel for the Petitioner and on perusal of the order sheet, it appears that on 29th July, 2011, an application was filed for expunging of evidence of D.W.1. The said application was heard on 12th August, 2011 and was posted for orders to 20th August, 2011. On 20th August, 2011, the order could not be ready, as the Court required certain clarification on the point of law. The matter was thereafter adjourned to different dates and on 29th September, 2011, it was dismissed for non-prosecution. Since the petition

was heard on merit, learned trial Court should have passed the order on merit on the said petition instead of dismissing it for non-prosecution. As in the meantime, eleven years have already elapsed, this Court feels that the impugned order under Annexure-7 should be set aside and the matter should be considered afresh.

7. Accordingly, the impugned order under Annexure-7 is set aside and the matter is remitted back to learned trial Court for fresh consideration of the petition dated 29th July, 2011 giving opportunity of hearing to the parties concerned.

8. Since the suit is of the year, 2003, learned trial Court shall make an endeavour for early disposal of the same in accordance with law.

9. Accordingly, the writ petition is allowed to the aforesaid extent.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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