

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.83 of 2020

Harihar Marandi

....

Petitioner(s)
Mr. S.Baug, Advocate

-versus-

Gangadhar Badu

....

Opp.Party(s)

CORAM:
JUSTICE BISWANATH RATH

ORDER
11.04.2022

Order No.

3

1. Heard learned counsel appearing for the petitioner.
2. In spite of notice to the contesting opposite party, nobody appears. Neither the brief nor A.D. has come back. There is presumption of sufficiency of notice on the contesting opposite party. The matter is decided only hearing the counsel appearing for the petitioner involved.
3. This is a serious case denying consideration of the written statement of the defendant for his failure in complying the order of the trial court directing for acceptance of written statement of the defendant subject to however payment of Rs.200/- as cost. On the premises that the counsel appearing for the defendant takes appropriate step, application was moved for recalling the order preventing the defendant from taking help of written statement for his not complying the previous conditional order. Such application having come to be rejected, present Civil Miscellaneous Petition was filed in this Court.
4. Learned counsel appearing for the petitioner claims that defendant is a Scheduled Tribe, uneducated and simply working under the guidance of the counsel. It is alleged that the inconvenience caused in not complying the order of the trial court on conditional acceptance of written statement subject to payment of cost arose for not only no communication from the side of the counsel for such conditional order

nor even the counsel taking any steps for compliance of such order as nothing prevented the counsel for depositing a sum of Rs.200/- for the written statement already on record to be brought on case fold. There is however no complaint against such advocate appearing in Bar Council.

5. Be that as it may, for this Court finds there may not be effective adjudication and scope of considering the written statement pleading getting reduced for non-acceptance of written statement even though for the laches of the defendant in spite of conditional permission granted by the trial court, for ends of justice, this Court finds the inconvenience and loss of time are all to be mitigated by payment of cost to the plaintiff involved. In the circumstance, this Court observes in the event the suit is still pending, the written statement of the petitioner be accepted subject to however payment of cost Rs.200/- already granted by the trial court further also payment of cost of Rs.3,000/- (Rupees three thousand) only to the plaintiff to compensate the plaintiff for his suffering for no fault on him rather repeated laches on the part of the defendant. The cost awarded hereinabove, if deposited within a period of ten days hence and receipt being filed, the written statement of the defendant shall be accepted. In the event there is progress in evidence, on filing of appropriate application, the defendant will also be protected either to enter into further cross-examination or evidence at his instance.

6. The Civil Miscellaneous Petition stands disposed of with the observation made herein above.

(Biswanath Rath)
Judge