

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 98 of 2018

Ashish Nayak

.... ***Petitioner***

Mr. Niranjana Panda, Advocate

-versus-

Prafulla Kumar Naik and others

.... ***Opp. Parties***

Mr. Baibaswata Panigrahi,
Additional Standing Counsel
(For Opposite Party Nos.8 and 9)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
19.12.2022

Order No.

7. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the ex-parte judgment dated 7th December, 2001 (Annexure-3) passed by learned Additional District Judge, Nabarangpur in Civil Misc. Appeal No.3 of 2000 (CMA No.15 of 1996), whereby learned appellate Court allowed the appeal and set aside the order dated 12th February, 1996 passed by learned Civil Judge (Senior Division), Nabarangpur in MJC No.71 of 1992 (arising out of TS No.24 of 1992) dismissing an application under Order IX Rule 13 CPC.
3. Mr. Panda, learned counsel for the Petitioner submits that TS No.24 of 1992 was decreed ex-parte against the Defendant Nos.1 to 6. Accordingly, the petition under Order IX Rule 13 CPC was filed in MJC No.71 of 1992, which was dismissed vide order dated 12th July, 1996 (Annexure-2). Against the same, the Petitioner preferred appeal under Order XLIII Rule 1(d) CPC, wherein, learned appellate Court holding

that notice was not duly served on Opposite Parties 1 to 7, allowed the said appeal ex-parte against Respondent Nos.1 to 6 and on contest against Respondent Nos. 7 and 8. Hence, this CMP has been filed. The sole contention Mr. Panda, learned counsel for the Petitioner is that since the appeal was decreed ex-parte against the Petitioner, liberty should be given to him to contest the appeal. He, however, submits that the Petitioner has not filed any application to set aside the ex-parte order/judgment passed by learned appellate Court.

4. In view of the above, the CMP is disposed of with an observation that if so advised, Petitioner may move the learned appellate Court for setting aside the ex-parte order passed against them. If such an application is filed within a period of one week from the date of reopening of the Court after ensuing winter holidays, delay in filing the petition shall be considered taking note of the fact that the CMP was pending before this Court since 24th January, 2018 till date along with other grounds.

5. The CMP is disposed of accordingly.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge