

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.137 of 2019

Swarnima Manjari Mohanty

Petitioner(s)

Mr.A.K.Tripathy,
Advocate

-versus-

Basudev Mohanty & Ors.

Opposite Party(s)

Mr.B.K.Mohanty,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
22.02.2022**

Order No.

06

1. Heard learned counsel appearing for the parties.
2. This Civil Miscellaneous Petition involves a challenge to the rejection of an application to defer the matter in order to have the opportunity of cross examination being rejected by the trial court.
3. Taking this Court to the dates taking place in the meantime and the petition involved, Mr. Tripathy, learned counsel for the petitioner submitted that further cross examination of P.W.1 by defendant nos.1 and 2 is relevant at least for just adjudication of the suit. It is keeping this in view, challenge is made to the impugned order on the ground that by the impugned order, there is deprivation of opportunity of cross examination which will ultimately resulted in ineffective adjudication of the suit involved.
4. Mr.B.K.Mohanty, learned counsel appearing for the opposite parties in his opposition taking this Court to the several dates of posting objected the claim of the petitioner on the premises that in spite of several opportunities and dates of examination and cross examination of P.W.1, the attempt of the petitioner here appears to be just to delay the disposal of the proceeding. It is on the above premises, learned counsel

for the opposite parties objected entertaining the Civil Miscellaneous Petition.

5. Considering the rival contentions of the parties and on perusal of the application at Annexure-8 but, however, keeping in view that in the meantime the proceeding was conducted on several dates and the defendant nos.1 and 2 have failed in opting their exercise for the further cross examination of defendant nos.1 and 2, there is definite suffering of the opposite parties in the event there is interference in such orders. Keeping in view the larger interest of litigants and to avoid any such controversy in appeal stage involving non examination of vital witness, this Court finds the impugned order ought to be interfered but, however, keeping in view the suffering of the opposite parties, the opposite parties can be compensated with cost.

6. In the circumstance and to avoid failure of an effective adjudication of the suit proceeding, while interfering in the impugned order dated 28.01.2021 passed by the Civil Judge (Senior Division), Kujanga in C.S.No. 24 of 23017 in refusing a scope to the Defendant Nos.1 and 2 for further cross examination of P.W.1 particularly the later order dated 28.01.2021, sets aside the same and allows the defendant Nos.1 and 2 to further cross examine the P.W.1 on the date being fixed by the trial court based on service of certified copy of this order but, however, subject to payment of cost at Rs.1500/- (Rupees fifteen hundred) to the plaintiff-opposite party no.1.

7. With this observation and direction, the Civil Miscellaneous Petition stands disposed of.

(Biswanath Rath)
Judge

Sks