

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.198 of 2019

Siba Prasad Dash & Ors.

....

Petitioner(s)

Mr. A.P.Bose, Advocate

-versus-

*Kamaleswar Deb Deity Bije Village
Deulapada & Ors.*

....

Opp.Party(s)

Mr.R.K.Pradhan-A,
Advocate.

CORAM:

JUSTICE BISWANATH RATH

ORDER

19.04.2022

Order No.

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1. Heard learned counsel appearing for the petitioners. In spite of appearance of a set of counsel for the contesting opposite parties, nobody is turning to contest the matter.
2. This Civil Miscellaneous Petition involves an order of rejection of an application under Order 1, rule 10 of the Code of Civil Procedure involving counter claim. Undisputed fact involves based on filing of the suit and after notice is served, there is filing of counter claim. The suit was filed in the year 2017. On the death of some of the party, there has been attempt for substitution by the plaintiff involving the suit sometimes in the year 2016. Such application appears to have been allowed in the month of September, 2016. For the amended plaint filed undisputedly nearly three months after an application was filed in counter claim seeking same substitution. There is no dispute that party suffered in the suit was also a party in the counter claim.
3. Assailing the impugned order, Mr.Bose, learned counsel appearing for the petitioners submitted that once an application for substitution is allowed in the suit, unless such substitution is carried out in the counter claim, there is no effective adjudication in the counter claim and when the plaintiff gets such opportunity, there is no question

for depriving the defendants of such opportunity. Taking to the reasoning in the impugned order, Mr.Bose, learned counsel for the petitioner submits the only reason in rejecting such application is that the application was filed after long time and the death of the party concerned.

4. Considering the submission of Mr.Bose, learned counsel for the petitioner, this Court finds when the substitution in the suit involving particular party is allowed hardly in September, 2016, filing similar application in the counter claim may be after two months or three months cannot be considered to have been filed after long delay and or involve inordinate delay. In the circumstance and for requirement of effective adjudication, this Court finds there is mechanical consideration of such application by the trial court. As a consequence, interfering in the impugned order at Annexure-1, this Court sets aside the same and allows the application under Order 1, rule 10 of the Code of Civil Procedure involving counter claim. It will be open to the concerned defendant to file amended cause title at least within a period of ten days hence along with copy of this order.

5. The Civil Miscellaneous Petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)
Judge