

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.492 of 2018

Nandakishore Biswal

....

Petitioner(s)

Mr. S.K. Mishra,
Advocate

-versus-

Gopal Chandra Sahoo

....

Opposite Party(s)

Mr. D. Mohapatra,
Advocate

CORAM:

JUSTICE BISWANATH RATH

ORDER

11.05.2022

Order No.

6. 1. This petition involves rejection of an application U/o.26 Rule 10(A) of C.P.C. filed on behalf of the defendant.
2. Taking this Court to the plea taken in the application and the reasons assigned in rejection of such application Mr. Mishra, learned counsel for the Petitioner contended that for there is specific allegation in the application at Annexure-4 the trial court should have undertaken an exercise to compare the signature aspect and thereafter come to reject the application. Mr. Mishra, learned counsel for the Petitioner alleged that there is wrong procedure adopted by the trial court, which needs to be interfered with.

It is, in the above premises Mr. Mishra, learned counsel for the Petitioner sought for interference in the impugned order at Annexure-6 and sets aside the same thereby allowing the application at Annexure-4.

3. In his opposition Mr. Mohapatra, learned counsel for the Opposite Party taking this Court to the written statement answers as

well as the plea taken in the petition submitted that the plea taken in the petition with regard to the controversy in respect of the signature of the person concerned, is an improvement after closure of evidence and more particularly in absence of any such plea or allegation in the written statement.

It is, in the above circumstance and for a new and surprise pleadings taken after closure of evidence, Mr. Mohapatra, learned counsel for the Opposite Party even challenged the entertainability of the application involved. Mr. Mohapatra, learned counsel for the Opposite Party, accordingly, supports the impugned order and requested this Court for rejecting the C.M.P.

4. Considering the rival contentions of the parties and reading the requirement in Annexure-4 at the instance of the defendant this Court finds, the dispute involved is a request to the trial court for making comparison of the signature through an expert. Taking into account the objection of the Opposite party, the nature of request involved herein and on perusal of the whole written statement, this Court finds, there is absolutely no pleading in challenging the signature alleged to have been not correct in the application at Annexure-4. In absence of such pleading this Court is of this opinion that there is no scope for bringing such application. This Court finds, the allegations made in paragraph no.4 are surprising and undisputedly raised after closure of evidence.

In the circumstance this Court finds that there was no occasion to bring the application at Annexure-4 and the application at Annexure-4 was *per se* not entertainable and there has been no question of getting into any such question.

5. In the result the C.M.P. stands dismissed.

(Biswanath Rath)
Judge

Ayaskanta Jena

