

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 572 of 2018

Geetanjali Pani

..... Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

Pratap Chandra Swain

.... Opp. Party

Mr. Khetra Mohan Dhal, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.09.2022

Order No.

- 7.
1. This matter is taken up through Hybrid mode.
 2. Though this matter is listed for orders today, on the consent of learned counsel for the parties, the same is taken up for hearing and final disposal.
 3. Petitioner in this CMP seeks to assail order dated 24th March, 2018 (Annexure-2) passed in IA No.1 of 2017 (Arising out of RFA No.60 of 2017), whereby learned District Judge, Cuttack dismissed an application under Order XXXIX Rules 1 and 2 CPC filed by the Petitioner (Appellant therein).
 4. Mr. Bhuyan, learned counsel for the Petitioner submits that the suit was filed by the Plaintiff/Petitioner for specific performance of contract. The suit was decreed in part directing the Defendant/Respondent to pay consideration amount. Assailing the same the Petitioner preferred the aforesaid appeal. During pendency of the appeal, Respondent/Opposite Party contemplated to alienate the suit land for which the Petitioner

filed IA No.1 of 2017 under Order XXXIX Rules 1 and 2 CPC. The said application was rejected by the impugned order. Hence, this CMP has been filed.

5. At the outset, Mr. Bhuyan, learned counsel for the Petitioner submits that the Petitioner ought to have filed an appeal under Order XLIII Rule 1(r) CPC assailing the order impugned herein. However, the CMP has been filed and while issuing notice on the question of admission this Court, vide order dated 18th April, 2018, as an interim measure directed both parties to maintain status quo over the suit /disputed property as on that date. It is submitted by learned counsel for the Petitioner that the said order is continuing till date. He therefore, prays that without delving into merit of the matter, interest of justice will be best served, if a direction is made to dispose of the appeal within a stipulated period maintaining the interim order passed by this Court.

6. Mr. Dhal, learned counsel for the Opposite Party vehemently opposed the above submission. It is his contention that since the CMP is not maintainable, interim order therein should be vacated immediately. He further relied upon a decision in the case of *M/s East End Infotech Pvt. Ltd and others Vs. M/s Esskay Machinery Pvt. Ltd. and others*, reported in 2007 (I) CLR 10, wherein this Court relying upon the parent decision under Order XXXIX Rules 1 and 2 CPC of the Hon'ble Supreme Court in the case of *Dalpat Kumar and another Vs. Prahallad Singh and others*, reported in AIR 1993 SC 226, came to hold that since the alienation, if any, will be governed under Section

52 of the Transfer of Property Act, application under Order XXXIX Rules 1 and 2 CPC should not be granted. It is his contention that pursuant to the decree, the Respondent / Opposite Party has already deposited the consideration amount before learned trial Court. He further submits that in a suit for specific performance the Plaintiffs have no absolute right to get the contract executed through Court. The Court has discretion to pass a decree to refund the consideration money which has been done in this case and the Respondent/ Opposite Party has complied with the said direction. Hence, the CMP merits no consideration and is liable to be dismissed. Consequentially, interim order granted is also liable to be vacated forthwith.

7. Taking into consideration the submissions made by learned counsel for the parties, this Court finds that assailing the judgment and decree passed in CS No.7060 of 2014 (I), the Petitioner has filed RFA No.60 of 2017, which is pending in the Court of learned District Judge, Cuttack. The Petitioner, who is Appellant before learned District Judge has filed this CMP assailing the order rejecting an application under Order XXXIX Rules 1 and 2 CPC. The statutory remedy is available to the Petitioner to assail the order impugned herein by filing an appeal under Order XLIII Rule 1(r) CPC. However, this Court taking cognizance of the matter, vide order dated 18th April, 2018 has directed the parties to maintain status quo over the suit property till the next date. Mr. Dhal, learned counsel for Respondent /Opposite Party, in course of hearing, submitted that the Respondent/Opposite Party has no intention to alienate the property in recent future.

8. In view of the facts and circumstances stated above, this Court is of the considered opinion that interest of justice will be best served if the appeal is disposed of on its own merit at an early date.

9. Accordingly, this Court, without delving into the issue of maintainability of CMP, disposes of the same with a direction to learned District Judge, Cuttack to dispose of the appeal, i.e., RFA No.60 of 2017 as expeditiously as possible, preferably by end of March, 2023 on its own merit giving opportunity of hearing to the parties concerned. Since the interim order was passed on 18th April, 2018 and is continuing as on date it is directed that parties shall maintain *status quo* over the suit property till disposal of the appeal.

Issue urgent certified copy of the order on proper application.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, with the motto 'Satyameva Jayate' in Devanagari script below it. The words 'HIGH COURT' are written in an arc at the top, and 'ORISSA' is written in an arc at the bottom. Two stars are positioned on either side of the central emblem.
(K.R. Mohapatra)
Judge