

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 187 of 2022

Mahanta Behera

.....

Petitioner

Mr. Sudhansu Sekhar Jena, Advocate

-versus-

***Security, General Administration
Department, Government of Odisha
and another***

....

Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate
(For Opposite Party Nos.1 and 2)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
17.08.2022**

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 14th February, 2022 (Annexure-1) passed by learned Civil Judge (Junior Division), Bhubaneswar in I.A.No.1 of 2021 (arising out of C.S. No.2769 of 2021), whereby he rejected an application under Order XXXIX Rule 3 C.P.C. filed along with aforesaid interim application.
3. Mr. Jena, learned counsel for the Petitioner submits that along with the plaint in C.S. No. 2769 of 2021, the Plaintiffs filed I.A. No.1 of 2021 under Order XXXIX Rules 1 and 2 C.P.C. As there was urgency in the matter, the Plaintiff also filed an application under Order XXXIX Rule 3 C.P.C. to pass an ad interim order of injunction by dispensing with service of notice on the Defendants, who are functionaries of State. Learned trial Court without considering the urgency in the

matter, rejected the application under XXXIX Rule 3 C.P.C. vide order dated 14th February, 2022 (Annexure-1). Hence, finding no order alternative, the Petitioner has moved this Court in the CMP.

4. Mr. Mishra, learned Additional Government Advocate for the Opposite Parties submits that copy of the CMP has not yet been served on the State. Since the functionaries of the State are the Defendants in the suit, the Petitioner may move the application under Order XXXIX Rules 1 and 2 C.P.C. by serving notice on the Defendants therein through alternate mode.

5. Taking into consideration the submission made by learned counsel for the parties, this Court finds that the Defendants in the suit are the functionaries of the State and they are being represented by learned Government Pleader/Additional Government Pleader attached to the said Court.

6. In view of the above, this Court, without interfering with the order impugned herein, disposes of the CMP with an observation that in the event, the Petitioner serves a copy of the interim application along with the plaint on learned Government Pleader/Additional Government Pleader attached to the Court of learned Civil Judge (Junior Division), Bhubaneswar to defend the case of the Defendants therein, the same shall be accepted. On service of the copy of the interim application along with plaint, the Defendants will file their objection to the IA within a period of fifteen days therefrom and in that event, learned trial Court shall do well to

consider the I.A.No.1 of 2021 as expeditiously as possible preferably within a period of fifteen days therefrom.

7. It is made clear that this Court has not expressed any opinion on the merits of the case of the Petitioner before learned trial Court.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy