

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.513 Of 2015
(Through video conferencing mode)

M/S. AB Erectors & Properties Pvt. ... ***Petitioner***
Ltd.

Mr. M.M.Pattnaik, Advocate

-versus-

Mrs. Jayanti Mohanty ***...*** ***Opposite Party***

CORAM: JUSTICE ARINDAM SINHA

ORDER
04.02.2022

Order No.

07. 1. Mr. Pattnaik, learned advocate appears on behalf of petitioner and submits, his client filed I.A. no.618 of 2021 with prayer for extension of said order passed on 29th April, 2015 in respect of further proceeding in, inter alia, C.S. No.126/2017/287/2013, pending in the Court of Civil Judge, Senior Division, Pipili. He submits, the interim order stood automatically vacated by the trial Court following directions made by the Supreme Court in **Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation**, reported in **(2018) 70 OCR (SC) – 531**, paragraph 35.

2. Order sheet reveals noting dated 14th January, 2020 confirming service made upon opposite party but she goes unrepresented.

3. Mr. Pattnaik submits, his client is in possession of suit land pursuant to agreement and power of attorney executed by opposite

party, who is owner of the land. During pendency of the suit, mortgage was created by her. His client wanted to implead the mortgagee as party in the suit but the application was rejected by impugned order dated 30th March, 2015.

4. Interim order made on 29th April, 2015 is quoted below:-

“ Issue notice to opposite party by registered post with A.D., requisites for which shall be filed by 1st May, 2015.

Put up this matter on 19th June, 2015.

As an interim measure this Court directs that further proceeding in I.A. No.138 of 2013 arising out of C.S. No.287 of 2013 pending before the learned Addl. Civil Judge (Sr. Divn.), Puri shall remain stayed till the next listing.”

Exceptional reason must now be found for revival and extension of the interim order as directed by the Supreme Court in **Asian Resurfacing of Road Agency** (supra).

5. In rejecting the application for addition of party, the trial Court said as follows:-

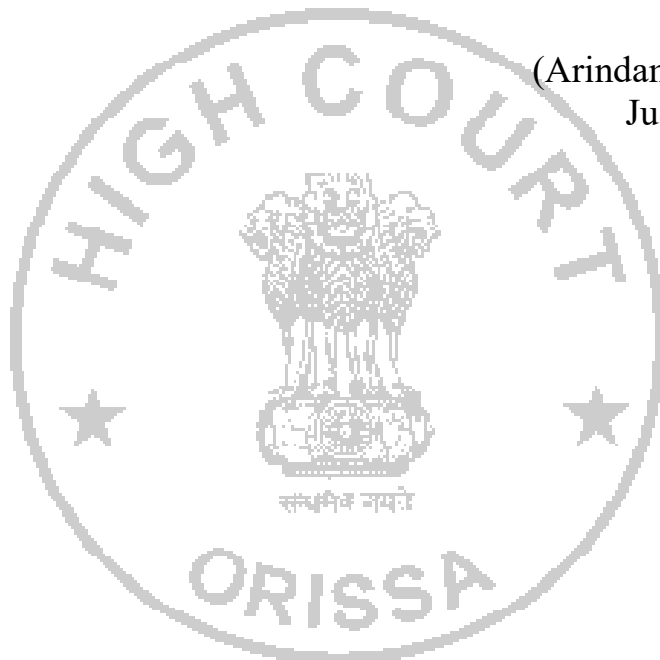
“Perused the case record. The petitioner has filed the original suit with a prayer for declaration that agreement vide dtd. 30.09.2011 and general power of attorney of that date be declared valid and genuine and binding on the defendant and for confirmation of possession of the plaintiff and for permanent injunction. In such type of case the mortgagee is not a necessary party. Moreover, as the mortgagee has been created during the pendency of the suit the mortgagee is binding on the result of this suit. Accordingly, I hold that the mortgagee is not a

necessary party in this I.A. Hence the petition filed by the petitioner stands rejected.

6. The trial Court appears to have held that the mortgagee was covered by doctrine of lis pendens (section 52 of Transfer of Property Act, 1882). There is no illegality in that.

7. The petition is found to be without merit and same is dismissed.

Prasant



(Arindam Sinha)
Judge