

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.224 of 2022

State Bank of India & Anr.

....

Petitioner(s)

Mr. S. Mishra,
Advocate

-versus-

Swarnalata Panda & Ors.

....

Opposite Parties

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
23.03.2022**

Order No.

01.

1. Undisputedly the Petitioners are parties to the suit instituted by the private opposite parties herein particularly the Opposite Party No.1. This C.M.P. involves a challenge to the refusal of application at the instance of the Bank. During pendency of the suit the Plaintiffs appear to have filed an application U/o.39 rule 1 & 2 read with Section 151 of C.P.C. seeking injunction against the Opposite Party Nos.2 & 3 herein vide I.A. No.3 of 2020 as clearly appearing at Annexure-8. The I.A. No.3 of 2020 having come to an end gave rise to file the F.A.O No.1 of 2020 at the instance of the Plaintiff again involving the Opposite Party Nos.2 & 3 herein. This appeal was again heard and decided on contest by the Addl. District Judge, Aska, Ganjam, who in disposal of the above noted F.A.O while interfering in the injunction order passed by the learned Civil Judge (Sr. Divn.), Aska in I.A. No.3 of 2020 directed the parties involved therein to maintain status quo. It is after disposal of the F.A.O. No.1

of 2020 as claimed by Mr. Misra, learned counsel for Petitioner, the Bank Authorities filed an application U/s.151 of C.P.C. seeking intervention in the first appellate court to come to the rescue of the Defendant No.1 for some development taking place in exercise of power of the Collector, which was rejected by the first appellate court thereby declining to exercise inherent power U/s.151 of C.P.C on the premises that the application U/s.151 of C.P.C. contains the subject beyond the purview of the application U/o.39 Rule 1 & 2. Mr. Misra, learned counsel for Petitioners challenging the impugned order passed by the lower appellate court involving application U/s.151 of C.P.C. contended that though the injunction order finally passed by the first appellate doesn't bind the Petitioner, the Collector taking advantage of the order of the lower appellate court declined to entertain the request of the Bank Authority. Mr. Misra, learned counsel for the Petitioner thus contended that unless there is clarification by the lower appellate court involving the action of the Defendant No.1 presently and in the survival of the suit, the Bank Authority gets difficulty in proceeding with their action.

2. Considering the contention of Mr. Misra, learned counsel for Petitioner and on perusal of the pleadings, the documents as well as the records, this Court finds, there is no dispute that in the injunction petition the Defendant No.1 i.e. the present petitioner was not involved, therefore there should not be any doubt that the injunction order, if any, passed in the process of consideration of application U/o.39 rule 1 & 2 only covers the parties to the proceeding U/s.39 rule 1 & 2 of C.P.C. On perusal of the application U/s.151 of C.P.C. this Court finds, the subject involved therein is completely outside the purview and scope of Order 39 rule 1 & 2 vide I.A. No.3 of 2020

culminated in F.A.O No.1 of 2020. Keeping in view the contest given by the Mr. Misra, learned counsel for Petitioner, this Court here entering into the observation of the lower appellate court in considering the application U/s.151 of C.P.C finds, the lower appellate court has clearly come to observe that the dispute raised in such application is completely outside the scope and consideration of the application U/o.39 rule 1 & 2 C.P.C.

In the circumstance and for the observation made hereinabove, this Court finds, the lower appellate court is justified in having such observation and consequently rejecting the application U/s.151 of C.P.C as not entertainable. Thus there is no scope for interfering in such order. This Court, therefore while dismissing the C.M.P. for having no ground to entertain the same, also observes, in the event the Petitioners have any other remedy, dismissal of the C.M.P. shall not stand on the way of the Petitioners in availing such remedy.

(Biswanath Rath)
Judge