

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.93 OF 2016

Biren Samal @ Biren Chandra Samal & ors.

Petitioners

Mr.S.Pattanaik, Adv.

-versus-

Satrughna Samal & ors.

Opposite Party(s)

None

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
11.3.2022**

I.A.NOS.672, 673 & 674 OF 2021

**Order
No.**

08.

1. Heard learned counsel for the Petitioners.
2. It is submitted that O.P.2 has died in the meantime. Finding there is common cause by all the O.Ps. and contesting of litigation all through under one lead, this Court finds, there is no need of substitution in this Application. It may be open to the Petitioners to take steps for substitution in trial proceeding, if necessary.
3. I.As. are disposed of accordingly.

(Biswanath Rath)
Judge

CMP NO.93 OF 2016

09.

1. In spite of sufficiency of notice, nobody is appearing for the O.Ps. to contest the case. Even after appearance of Defendant Nos.9,

10 & 11, there was no filing of written statement in appropriate time and on filing the written statement on a later date, an Application was also moved to accept delayed filing of written statement. Refusal of such Application, it appears, by orders dated 24.6.2015 and 29.10.2015 the trial court set the Defendants ex parte by making ex parte Defendant No.9 on 24.6.2015 and Defendant Nos.10 & 11 on 29.10.2015 respectively. Filing Application under Order 9 Rule 7 of C.P.C., the Defendants, the Petitioners involved herein, attempted to seek indulgence of the trial court for setting aside the ex parte orders involving such Parties thereby accepting the written statement and providing opportunity of contest to the defendants. The Application having been heard has come to be rejected giving rise to filing of the present C.M.P.

2. Learned counsel for the Petitioners in his defence taking this Court to the Application involved at Annexure-2 submitted that the Application under Order 9 Rule 7 of C.P.C. was filed immediately after the Parties were set ex parte and since there was no commencement of argument involving the Suit, written statement filed late could have been accepted on acceptance of application of request to condone delay in filing of written statement. It is claimed that in the event there was some prejudice to the Plaintiffs involving a delayed action, nothing prevented the trial court in allowing such

Application to award cost required to be paid to the Parties affected. With the above background, taking this Court to the ground of rejection, the Petitioners also contested the ground not being strengthened to debar the Defendants from having their contest in a suit of the nature involved. Nobody contests for the opposite parties.

3. Considering the submission of the learned counsel for the Petitioners and after perusal of the reasons assigned in the Application under Order 9 Rule 7 of C.P.C., further looking to the stage of Suit at the time of setting the Defendants as ex parte, this Court finds, there is mechanical consideration of the claim of these Parties by the trial court. Further for the settled position of law, all endeavours should be made by the trial court to finish up the Civil Suit in contest of the Parties rather than deciding the Suit uncontested and thereby avoiding multiplying the litigations. It is keeping this in view, further as this Court finds, the Petitioners have a case to contest the Suit involved, there appears, there is definite prejudice to the Defendants for loss of number of years in the meantime. This Court here taking into account the further proceeding in the Suit has been stayed by this Court on 28.1.2016 and trial involving the suit yet to take place and the C.M.P. having come to be disposed of in 2022, there is definite loss to the Plaintiffs

involved herein, for the opinion of this court, the Plaintiffs deserves cost by way of compensation.

4. For there is already delay of almost six years in the meantime, while interfering with the impugned order dated 5.1.2016 under Annexure-3, setting aside the same and allowing the Application for acceptance of written statement by the Parties, this Court directs the trial court to accept the written statement of the Parties involved subject to however payment of cost of Rs.2,000/- (rupees two thousand) to each of the Plaintiffs to be paid within a period of two weeks from the date of this order. Provided the Petitioners file the receipt of payment of cost in due time, the trial court shall proceed with the trial of the Suit on acceptance of written statement. Considering the Suit is pending for so many years, attempt may be made to dispose of the same finally within a period of one year.

5. With the above observation/direction, the CMP stands disposed of.

(Biswanath Rath)
Judge

M.K.Rout