

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.240 OF 2022

Arun Kumar Rout

....

Petitioner

Ms.D.Mahapatra, Adv.

-versus-

Jaladhar Lenka

....

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
25.3.2022**

**Order
No.**

1.

1. Heard learned counsel for the Petitioner.

2. This CMP involves the following prayer :-

“It is, therefore, prayed that this Hon’ble Court may graciously be pleased to issue Rule Nisi in the nature of writ of mandamus/certiorari and/or any other appropriate writ/writs, direction/directions, order/orders calling upon the opp. Party-defendant to show cause as to why he shall not be directed to go ahead with the construction of the building over the suit land ;

And

Further, the learned District Judge, Kendrapara may be directed to dispose of the I.A. No.4 of 2022 (airisng out of F.A.O. No.15 of 2022) within a time to be stipulated by this Hon’ble Court..”

3. Taking this Court to the impugned order involving I.A. No.4/2022 arising out of F.A.O. No.15/2022 at Annexure-6, Ms.D.Mahapatra, learned counsel for the Petitioner submitted that undisputedly, there involved urgency for the Petitioner already has a

lot of investment, Petitioner applied urgent grant of injunction on consideration of Petition under Order 39 Rule 3 of C.P.C. It is further contended that once the Petition under Order 39 Rule 3 of C.P.C. was rejected on 28.2.2022, it becomes an impediment on the Court concerned to at least fix the Injunction Petition under Order 39 Rules 1 & 2 of C.P.C. at an early date so as to provide justice to the Parties. It is urged, in no circumstance, the lower appellate court while rejecting the Petition under Order 39 Rule 3 of C.P.C. to have posted the Order 39 Rules 1 & 2 of C.P.C. Petition to 29.4.2022, i.e., almost two months after and that too for appearance of the Parties. Learned counsel for the Petitioner thus contended that the lower appellate court failed to appreciate the urgency involving the Order 39 Rules 1 & 2 of C.P.C. Petition and taken up Petition casually. It is in the above background, learned counsel for the Petitioner requested this Court for preponement of the appearance date as well as fixing a time frame for ultimate disposal of the Order 39 Rules 1 & 2 of C.P.C. Petition.

4. Considering the submission of the learned counsel for the Petitioner this Court even though declined to entertain the first prayer taken note herein above, for pendency of I.A. NO.4/2022 involving an unsuccessful attempt by same Petitioner in the trial court, however this Court finds force in the submission of the

learned counsel for the Petitioner insofar as mechanical approach of the lower appellate court in taking up the Petition under Order 39 Rules 1 & 2 of C.P.C. For the opinion of this Court, in the event the Civil Court takes up the Petition under Order 39 Rules 1 & 2 of C.P.C. Petition along with the Petition under Order 39 Rule 3 of C.P.C. and comes to reject the Order 39 Rule 3 of C.P.C. Application finding no extreme urgent ought to pass order fixing short returnable date, if necessary, even asking the Party concerned expressing urgency to take out notice through Special Messenger and also by fixing a short date and attempt to conclude the disposal of the Petition under Order 39 Rules 1 & 2 of C.P.C. at the earliest.

5. In the circumstance and keeping in view the allegation of the Petitioner, particularly finding from the impugned order on the Order 39 Rule 3 of C.P.C. Application was rejected on 28.2.2022, for the opinion of this Court, in no circumstance the appearance date of the O.Ps. involving Order 39 Rules 1 & 2 of C.P.C. Petition could have been fixed to 29.4.2022 after two months of rejection of the Order 39 Rule 3 of C.P.C. Petition. This Court finds, there is clear failure in understanding the urgency involving Order 39 Rules 1 & 2 of C.P.C. Petition by the appellate court. To avoid any further loss of time, instead of issuing notice in the matter and passing final order herein, this Court feels it appropriate in disposal of the present CMP

to permit the Petitioner to file a Petition on 29.3.2022 before the lower appellate court seeking preponement of the posting of I.A. No.4/2022 also with liberty to take out notice therein by way of Special Messenger at his own cost. In such event, the Petition shall be taken up within two days and order, as appropriate, even including issuing notice to the O.P. by way of Special Messenger at the cost of the present Petitioner shall be passed keeping in view the early disposal of the Order 39 Rules 1 & 2 of C.P.C. Petition at least within two weeks. This order is however provided the O.P. has not appeared in the Appeal as of now. In the event the O.P. has already appeared in F.A.O. No.15/2022 then hearing shall be undertaken by simply serving copy of I.A. No.4/2022 on such Party and providing him opportunity of objection by one week and the lower appellate court shall do well in finalizing I.A. No.4/2022 at least within a period of two weeks from the date the Petitioner files the required Petition on 29.3.2022.

(Biswanath Rath)
Judge

M.K.Rout