

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.253 of 2022

Paradip Truck Owners Association & Ors. ***Petitioner(s)***

Mr. S.P. Mishra,
Sr. Advocate

-versus-

M/s. Nirakar Construction, Paradeep & Ors. ***Opposite Party(s)***

Mr. S. Mishra,
Advocate for O.P.1

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
31.03.2022**

Order No.

01. 1. Undisputedly for the allowing of the I.A. No.264/2021 by the trial court, the party aggrieved preferred F.A.O. No.3 of 2022. During pendency of the appeal the appellant filed an application U/o.41 rule 5 of C.P.C. read with Section 151 of C.P.C. which having been rejected by the impugned order gave rise to file of the present C.M.P.
2. Mr. S.P. Mishra, learned Senior Advocate appearing on behalf of the Petitioners taking this Court to the plea taken in the F.A.O as well as the application attached therein contended that there is urgency in considering the effect of the order passed by the trial court in the I.A. involved in the F.A.O. It is alleged that the lower appellate court failed in appreciating this aspect and therefore arrived in the wrong impugned order.
3. Mr. S. Mishra, learned counsel for the Opposite Party No.1 however objected to such claim of the Petitioners on the premises that once the appeal involves such a contingency, allowing the application

U/o.41 Rule 5 read with Section 151 of C.P.C. will itself amount to interfere in the impugned order therein as interim, which is not permissible in the eye of law.

4. Considering the submissions made by the parties, this Court finds force in the submission of Mr. S. Mishra, learned counsel for the Opposite Party No.1 and accordingly declines to entertain the C.M.P. However, finding urgency in disposal of the F.A.O No.3 of 2022 and recording the submission of Mr. Mishra, learned Senior Advocate appearing on behalf of the Petitioner that service of notice involving the above noted F.A.O is yet to be made sufficient and there is no appearance of the respondents therein as of now, this Court directs the contesting respondent i.e. the Opposite Party No.1 herein to appear before the lower appellate court on 8th April, 2022 and on appearance of the respondent-Opposite Party No.1 copy of the memorandum of appeal alongwith all enclosures shall be served on the learned counsel for the Opposite Party No.1 on that date itself. This Court here records, since present application already involves all such Petitioners, the Opposite Parties should not take the pleas of not possessing the appeal memo and related papers.

For the observation made hereinabove, this Court directs the learned Additional District Judge, Kujang to conclude the hearing of the F.A.O. No.3 of 2022 at least within a period of three months after appearance of both the parties on the date fixed.

5. The C.M.P stands disposed of with the above direction.

(Biswanath Rath)
Judge