

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.1387 of 2017

Sisir Kumar Mohanty

....

Petitioner(s)

Mr.B.Bhuyan, Advocate

-versus-

Subash Chandra Choudhury & Anr.

Opposite Party(s)

Mr.S.P.Mishra, Sr.
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
28.03.2022

Order No.

6.

1. Heard learned counsel appearing for the parties
2. This Civil Miscellaneous Petition involves allowing an application under Order 6, rule 17 of the Code of Civil Procedure at the instance of the defendants by the Trial Court. Mr.Bhuyan, learned counsel appearing for the petitioner assailing the impugned order taking this Court to the proposed amendment to the written statement argued the matter from the point of view of due diligence. Mr.Bhuyan, learned counsel also contended on the premises looking to the position involving the suit evidence from the side of the plaintiff having been closed alleges in the event allowing such amendment at this stage of the matter, there is serious prejudice to the plaintiff as he has already completed his evidence.
3. Mr.Mishra, learned senior counsel appearing for the opposite parties on the other hand attempted to support the impugned order contending that it is always not the case involving establishment of due diligence, it should rather involve the effective adjudication of the suit. Mr.Mishra, learned senior counsel for the opposite parties also contended that even assuming there is no prejudice to the plaintiff even though the plaintiff has already closed evidence, nothing prevents the plaintiff to reopen the evidence so far it relates to the additional

pleading came by way of amendment and in the circumstance it will be appropriate if plaintiff may be entitled to higher cost. Taking this Court to the impugned order, learned counsel for the opposite parties also established before this Court that in allowing such application, there has been grant of cost at higher side.

4. Considering the rival contentions of the parties, this Court even though finds there is delayed attempt in bringing the pleadings by way of proposed amendment, for the observation of the trial court, this Court finds the pleading was brought by way of proposed amendment for the purpose of effective adjudication. Question comes here if there is prejudice to the plaintiff, looking to such attempt of the defendant taking place after closure of evidence of the plaintiff? Keeping this in view, this Court finds there is effective adjudication in the event of involvement of the proposed amendment at the stage of completion of evidence from plaintiff side further such amendment will also avoid multiplicity of litigation. This Court also finds in considering such aspect, the trial court has granted a sum of Rs.500/- as well approving the order as herein so far it relates to allowing the application under Order 6, rule 17 of the Code of Civil Procedure by defendant no.1. This Court however interferes with the grant of cost by enhancing the same to Rs.3,000/- (Rupees three thousand) be paid to the plaintiff in the court below within one week. The defendant no.1 is directed to file amended written statement, if not filed, at least within a period of seven days hence. On filing of additional written statement, if any, and production of receipt on payment of cost, the trial court shall suo motu allow recalling of plaintiff witness or witnesses and allow chief as well as further cross examination, if any, to the respective parties.

5. The Civil Miscellaneous Petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)
Judge