

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 13537 OF 2012

Mira Sahoo and another* *Petitioners

Mr. Suresh Chandra Mohanty, Advocate
-versus-

Amaresh Sarkar and others* *Opp. Parties

Mr. Bibekananda Bhuyan, Advocate
(For Opp. Party No.1)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
09.11.2022**

Order No.

14. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 16th April, 2012 (Annexure-3) passed by learned Second Additional District Judge, Cuttack dismissing Civil Revision No.6 of 2004, whereby order dated 17th August, 2004 (Annexure-2) passed by learned Civil Judge (Senior Division), 1st Court, Cuttack in Misc. Case No.91 of 2002 (arising out of T.S. No.120 of 1992), allowing an application under Order IX Rule 13 C.P.C. filed by the Opposite Party No.1, namely, Amaresh Sarkar, was allowed.
3. Mr. Mohanty, learned counsel for the Petitioners assails the impugned order under Annexures-2 and 3 on the ground that the *ex parte* decree passed in T.S. No.120 of 1992 came to the knowledge of Opposite Party No.1 in July, 1996 when some

of the Defendants in T.S. No.120 of 1992 filed T.S. No.140 of 1993 with a prayer to declare the decree passed in T.S. No.120 of 1992 as nullity and not binding on them. Reading out the provision under Order IX Rule 13 C.P.C., Mr. Mohanty, learned counsel for the Petitioners submits that the period of limitation starts from the date of knowledge of decree passed in T.S. No.120 of 1992, which came to the knowledge of the Opposite Party No.1 in July, 1996. Admittedly, the petition under Order IX Rule 13 C.P.C. (Misc. Case No.21 of 2002) was filed in the year 2002, which is hopelessly barred by limitation. Although this point of law was raised before learned trial Court as well as learned revisional Court by the Petitioners, learned Courts without appreciating the same in its proper perspective, allowed the application under Order IX Rule 13 C.P.C. Hence, the impugned orders under Annexures-2 and 3 are liable to be set aside.

4. Mr. Bhuyan, learned counsel for the Opposite Party No.1 on the contrary submits that the decree in T.S. No.140 of 1993 was passed *ex parte* declaring the decree passed in T.S. No.120 of 1992 as nullity and not binding on the Plaintiffs of T.S. No. 140 of 1993. Thus, on and from the date when *ex parte* decree in T.S. No.140 of 1993 was passed, decree passed in T.S. No.120 of 1992 became inoperative till the *ex parte* decree in T.S. No.140 of 1993 was set aside, which was in the year 2002. Within a period of one week from the date the

decree passed in T.S. No.140 of 1993 was set aside, petition under Order IX Rule 13 C.P.C. in Misc. Case No. 91 of 2002 was filed for setting aside the *ex parte* decree in T.S. No.120 of 1992. Learned trial Court on discussing the same, condoned the delay in filing the petition for setting aside the *ex parte* decree in T.S. No. 120 of 1992. As such, no illegality has been committed by learned Courts in passing the orders under Annexures-2 and 3. He further submits that the impugned orders being based on sound reasons, this Court should be slow in interfering with the same in exercise of power under Article 227 of the Constitution in view of the ratio decided in the case of ***Radhey Shyam and another –v- Chhabi Nath and others***, reported in (2015) 5 SCC 423. Hence, the writ petition merits no consideration.

5. Upon hearing learned counsel for the parties and on perusal of the record, more particularly, the observation made by learned trial Court as well as learned revisional Court under Annexures-2 and 3, it is apparent that the issue raised by learned counsel for the Petitioners was meticulously and elaborately dealt with. T.S. No.120 of 1992, was decreed *ex parte* against the Opposite Party No.1 as well as other Defendants therein. The said *ex parte* decree was challenged in subsequent suit i.e. T.S. No.140 of 1993. The said suit was decreed *ex parte* against the present Petitioners in the year, 1996 holding that the decree passed in T.S. No.120 of 1992 as

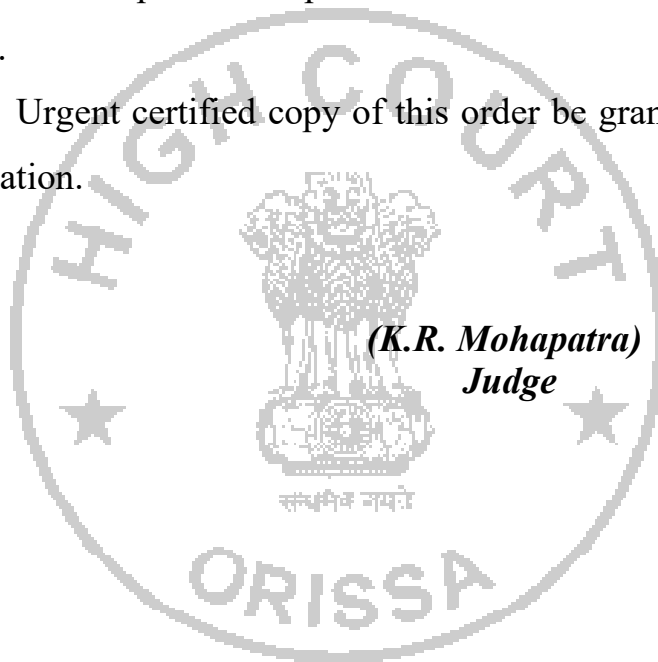
nullity and not binding on the Plaintiffs in T.S. No.140 of 1993. In view of the above, the decree passed in T.S. No. 120 of 1992 became inoperative. When the Petitioners came to know about the same, they filed an application to set aside the *ex parte* decree in T.S. No.140 of 1993, which was allowed vide order dated 26th February, 2002 / 1st March, 2002 by setting aside the *ex parte* decree passed in T.S. No.140 of 1993. Accordingly, the decree passed in T.S. No.120 of 1992 became operative from that date only. During subsistence of the *ex parte* decree in T.S. No. 140 of 1993, there was no occasion on the part of the Opposite Party No. 1 to file any application to set aside the *ex parte* decree in T.S. No. 120 of 1992. Thus, immediately after the *ex parte* decree passed in T.S. No. 140 of 1993 was set aside the Opposite Party No.1 without making any further delay filed an application in Misc. Case No.91 of 2002 to set aside the *ex parte* decree in T.S. No.120 of 1992. In view of the above, although the *ex parte* decree passed in T.S. No.120 of 1992 came to the knowledge of Opposite Party No.1 in the year, 1996, but he could not have filed an application to set aside the *ex parte* decree in T.S. No.120 of 1992 in the year 1996.

6. Considering the same, learned trial Court as well as learned revisional Court rightly held that the delay in filing the petition under Order IX Rule 13 C.P.C. (Misc. Case No.91 of 2002) should be condoned and the *ex parte* decree be set aside subject to payment of cost.

7. In view of the discussion made above, I find no infirmity in the impugned orders under Annexures-2 and 3. Accordingly, this writ petition being devoid of any merit stands dismissed.

8. Since the suit is of the year, 1992, learned trial Court should make an endeavour for early disposal of the same in accordance with law giving opportunity of hearing to the parties concerned. It is made clear that the Court, if so required may adhere to the procedure provided under Order XVII Rule 1 C.P.C.

Urgent certified copy of this order be granted on proper application.



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