

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.262 of 2022

Sarat Chandra Mishra & Anr.

.....

Petitioner

Mr.S.R.Mishra, Advocate

- Versus-

Mahendra Mishra & Anr.

.....

Opposite parties

Mr.M.K.Mishra, Advocate

CORAM:

JUSTICE BISWANATH RATH

ORDER

18.05.2022

Order No.
03

1. Heard the learned counsel appearing for the parties.
2. This Civil Miscellaneous Petition involves rejection of an application under Order 26, rule 1 of the Code of Civil Procedure. Petitioners as defendants placed such application claiming deputation of Commission to record the statement of the petitioner not involved therein, on the premises that the petitioner No.1 herein is not only an old person but also unable to move out of house. To such claim, the defendants filed an objection, strongly objecting to such claim by the plaintiffs on the premises that when the party involve is able to swear an affidavit and able to come to the ground floor of the particular court itself on particular date, as there is no strength in such person. Considering such objection, it appears there is rejection of the application involved resultantly the Civil Miscellaneous Petition is moved here.
3. Considering the rival contentions of the parties, this Court finds there is strength in the objection but, however looking to the age

of the person concerned claim by such person cannot be ruled out. Even otherwise also in allowing such application, not only there is no prejudice to defendants but suffering of the defendants and their counsel since required to travel particular distance to attend the cross-examination beyond the court area, such aspect can be taken care of in allowing such application with grant of appropriate cost.

4. In the circumstance, this Court finds there is no prejudice in allowing such application particularly keeping in view the age of the person concerned. There is failure in legal exercise of mind by the trial court in the matter. In the process, this Court interfering in the matter, allows the application under Order 26, rule 1 of the Code of Civil Procedure directing the trial court to fix the date of examination of the petitioner involved herein also with permission to the counsel for the defendants to have the cross-examination opportunity on the spot itself. In the process, since the defendants are required to enter into expenses and take their counsel to the door of the petitioner for the purpose, this Court in allowing such application directs the petitioner involved therein to at least deposit a sum of Rs.3,000/- (rupees three thousand) out of which Rs.1,000/- (rupees one thousand) to be paid to the defendants and Rs.2,000/- (rupees two thousand) to the counsel for the defendants to attend the cross examination of the petitioner therein on the date fixed. Examination and cross-examination will all have to be finished in one date.

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