

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.861 of 2016

Bonai Industrial Co. Ltd.

....

Petitioner

Mr. S. Mohanty,
Mr. J. Das,
Sr. Advocates being assisted by
Mr. I. Acharya,
Mr. S. Das,
Advocate

-versus-

Anil Kumar Singh Deo

....

Opposite Party

None

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
10.03.2022**

Order No.

11. 1. Heard Mr. S. Mohanty, learned Senior Advocate appearing on behalf of the Petitioner. In spite of appearance of a set of counsel on behalf of the Opposite Party, nobody appears at the time of call. Therefore, this matter is decided only hearing the learned Senior counsel for Petitioner.
2. Impugned order involves disposal of two miscellaneous applications. On the submission of learned Senior Counsel this C.M.P is confined to the impugned order dated 4.05.2016 involving

C.S. No.2 of 2016 however, following disposal of an application U/s.151 read with Section 11 of C.P.C.

3. This C.M.P. involves the following prayer :

“In the circumstances stated above, it is therefore humbly prayed that this Hon’ble Court be graciously pleased to admit this writ application, call for the records of the court below and issue Rule Nisi calling upon the Opposite Party No.1 to show cause as to why the Impugned Order dated 4 May, 2016 in C.S. No.02/2016 titled Anil Kumar Singh Deo vs. Bonai Industrial Company Limited & others passed by the Civil Judge (Senior Division), Bonai under Annexure 1 should not be quashed and set aside;

And if the Opposite Party No.1 fails to show cause or shows insufficient cause and after hearing the parties, the said rule be made absolute by quashing and setting aside the Impugned order under Annexure 1 and further be pleased to allow the application for dismissal of the suit C.S .No.02/2016 titled Anil Kumar Singh Deo vs. Bonai Industrial Company Limited & others pending before the Civil Judge (Senior Division), Bonai and consequently dismiss the aforesaid suit;

And allow this application.”

4. From the disclosures through paragraph nos.1, 3 & 4 this Court finds, the C.M.P. involves disposal of the application U/s.151 of C.P.C. read with Section 11 of C.P.C. by the trial court involving Civil Suit No.2 of 2016 on 4.05.2016. The impugned order available at Annexure-1 also involves rejection of an application U/o.7 rule 11 of C.P.C., which challenge involves another Civil Miscellaneous Petition also on Board today. In course of submission taking this Court to the disclosures through the pleadings in plaint at paragraph nos.7, 8, 9 & 10 at page 98 to 100 Mr. Mohanty, learned Senior

Advocate appearing on behalf of the Petitioner seriously objected the entertainability of the suit on the premises that there is prohibition of bringing such a suit after such long lapse of time, further for the nature of dispute involved therein such a suit is also barred under the provision of the Section 430 of the Companies Act, 2013. It is, at this stage of the matter, Mr. Mohanty, learned Senior Advocate appearing on behalf of the Petitioner bringing to a development in the legal provisions in the Mines and Minerals (Development and Regulation) Act, 1957 hereinafter in short be reflected as the Act, 1957 and reading through the provision at Section 8-A(6) therein, attempted to object the continuance of the suit otherwise for the lease involving the Civil Suit practically has already come to end on 31.03.2020 even including the period of renewal last made. Mr. Mohanty, learned Senior Advocate also submitted that for further development taking place in the meantime, one lease hold area is already leased out to 3rd party and other part is taken over by the State as owner of the property, Mr. Mohanty, learned Senior Advocate thus also claimed that there is no lease involving the suit exists with the Petitioner-Company, taking out the suit as a whole. Mr. Mohanty, learned Senior Advocate thus requests for appropriate order at this stage.

It is, in the above background of the matter, while attempting to challenge the impugned order Mr. Mohanty, learned Senior Advocate appearing on behalf of the Petitioner contended that for the clear restriction in continuance with the suit and looking to the nature of the relief sought for through the suit by way of injunction involving non-existing lease and further for the period of lease having expired from 31.03.2020, there is no purpose in continuing

with the suit and continuing with the suit will be ultimately wastage of time and there will be no achieving of any relief ultimately.

5. This Court here keeping in view the submissions advanced by Mr. Mohanty, learned Senior Advocate finds, the suit of the Opposite Party No.1 herein i.e. the plaintiff is clearly based on the pleading by way of allegation that the ancestor of the defendant nos.2 to 10 involving the suit had perpetrated and had by virtue of the fraud became the director of the Petitioner-Company the Defendant No.1- more particularly the Petitioner herein. Looking to the allegation of the present Petitioner that the suit is grossly belated by time, this Court here takes into account the age of the Defendant Nos.2 to 10 as disclosed in the plaint available at Annexure-2 at page 94 of the brief also running parallel to the cause title disclosed in the impugned order at Annexure-1 and finds, the details so far it relates to defendant nos.2 to 10 runs as follows :-

- “2. Mr. Sidhartha Rungta, aged about 37 years,
 3. Nandlal Rungta, aged about 64 years, S/o.late SR Rungta
 4. Mukunda Rungta, aged about 56 years, S/o.late SR Rungta
 5. Manju Rungta, aged about 50 years, W/o. Nandlal Rungta
 6. Smt. Preeti Rungta, aged about 48 years, W/o. Mukund Rungta
 7. Smt. Shradha Rungta, aged about 36 years, W/o.Sidartha Runta
 8. Mahesh Dutta Rustagi, aged about 76 years, S/o.-Not Known
 9. Ashutosh Mohanty, aged about 44 years, S/o.-Not Known
 10. Devi Ram Ojha, aged about 76 years, S/o.-Not Known
- Defendants 2 to 10 are Directors of Defendant No.1 & having office At-Main Road, Barbil, Dist. Keonjhar, Pin-758035”

Reading through the cause title at Defendant Nos.2 to 10 taken note hereinabove, this Court finds, the most aged eldest legal heir member of the ancestor the defendant no.3 being already 64 years at the time of filing of the suit also looking to the cause of action at the instance of the ancestor of such party even taking into

account the age of the youngest member in the ancestor family the Defendant No.7 being 36 years must have taken place several decades behind. Giving a serious doubt further the foundation in bringing the suit being a fraudulent action of ancestors of these defendants this Court finds, there is great doubt on the rejection of the application U/s.11 read with section 151 of C.P.C. as well as application U/o.7 rule 11 of C.P.C. by the trial Court. Petition at hand also involves several other grounds on the sustainability of the suit, however keeping in view the clear and unequivocal statement by Mr. Mohanty, learned Senior Advocate on no scope for continuance in the suit otherwise on application of Section 8-A of the Act, 1957, this Court here finds, the provision reads as follows :-

“8-A. Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals. – (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.”

6. Reading together with the nature of dispute and the clear restriction by virtue of the provision at Section 8-A (6) of the Act, 1957 and that by way of subsequent development on coming into

force of Section 8-A hereinabove by taking away the lease hold from the defendant No.1 the Petitioner-Company, consequently other defendants no more in use of the lease hold involved, this Court finds, after the date 31.03.2020 there is no survival of the lease involved herein for the expiry of the lease period in the meantime. This Court here also observes, looking to the nature of allegation involving alleged fraud by the ancestor of defendants 2 to 10 and for no survival of the ancestor even at the time of filing suit, no reason in continuing with such suit. Thus there is no scope for continuing with the trial to achieve any goal.

7. In the circumstance and for the expiry of period of lease in the meantime and for the change in the legal position involving this issue, this Court also records that the lease property involved having been auctioned in the meantime, has been assigned in favour of the 3rd party. This Court here also records the submission of Mr. Mohanty, learned Senior Advocate appearing on behalf of the Petitioner-Company that after expiry of the lease period involved and following the development one of the lease involved has been auctioned in favour of the 3rd party and the other lease property has been taken over by the State as true owner of the mines, looking to the entire gambit of the matter, this Court finds, there is no purpose in continuing with such suit. The suit is, therefore, declared to be dismissed. This Court here also takes note of the fact that while entering into hearing at admission stage on 3.06.2016 there was already appearance of the Plaintiff by a set of counsel and by order of this Court dated 3.06.2016, there is already service of notice on the appearing counsel by way of notice and the counsels so appeared continued to appear in number of proceedings herein but nobody

attended today's proceeding to counter the submission raised on behalf of the Petitioner. It is made clear that even though the dispute involves so many points, but for the present position and as recorded hereinabove, this Court finds, the suit is no more entertainable and therefore, this Court while declining to enter into other issues involved and keeping the same open to the decided in fresh dispute, if any, directs the Civil Suit No.02 of 2016 be treated as dismissed as no more entertainable.

8. The C.M.P. is disposed of accordingly.

(Biswanath Rath)
Judge

Ayaskanta Jena

