

A.F.R

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.323 of 2022

Kanchandra Manjula @ K. Manjula

Petitioner(s)

Mr. A. Das,
Advocate

-versus-

Rajeswar Sahu

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
29.04.2022**

Order No.

01. 1. This C.M.P. involves a challenge to the impugned order dated 7.01.2022 passed by the learned 2nd Addl. Senior Civil Judge, Berhampur in I.A. No.9 of 2021 vide Annexure-8.
2. In filing the application at Annexure-3 under the provision of Section 27 & Section 151 read with Order 32 Rule 3 further read with Section 15 of C.P.C. Defendant No.4 the Petitioner herein made an attempt for dismissal of the suit for not being duly and validly instituted as in the manner prescribed in law and the plaint presented plays fraud by suppressing the fact of unsoundness of the defendant no.6. This application appears to have been filed banking upon a counter affidavit of the plaintiff filed against miscellaneous application dated 27.08.2021 vide Annexure-6. Reading through the disclosures by the plaintiff through counter affidavit, Mr. Das, learned counsel for the Petitioner contended that once the plaintiff himself through a counter to the miscellaneous application admits, the defendant no.6 remains

unsound, it itself discloses that there is suppression of this material facts in the plaint and the plaint is, therefore, made to be dismissed for non-compliance of the provision at Order 7 Rule 1(d) of C.P.C. It is then taking this Court to the impugned order, Mr. Das, learned counsel for the Petitioner contended that this order is passed in non-consideration of the admission of the plaintiff himself.

3. Considering the submissions of Mr. Das, learned counsel for the Petitioner and for the application U/o.7 Rule 1(d) C.P.C, this Court finds, the provision at U/o.7 Rule 1(d) C.P.C. reads as follows:-

“1. Particulars to be contained in plaint – The plaint shall contain the following particulars :-
(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;”

4. For the above contingency this Court is of the opinion that there may be requirement of filing of application under Section 27 & Section 151 read with Order 32 Rule 3 further read with Section 15 of C.P.C. Reading the entire plaint averments, this Court nowhere finds, the plaintiff at least disclosed the unsoundness in defendant no.6. This Court here again finds, the suit was filed in 2018 whereas objection of the plaintiff referred to herein came on record on 6.09.2021 almost after three years of filing of plaint. It is not known, if defendant no.6 has gone unsound in the meantime? Further contingency of such application pressed is dependent on plaint averment and cannot be either on the basis of some statement in counter to a miscellaneous application or on the basis of written statement response. It is, in the circumstance, for this Court does not find any such lapse in the plaint, there is no application of provision at Section 27 & Section 151 of the C.P.C. It is, at this stage of the matter, this Court finds, there has been some statement in the counter affidavit observing that unless such

statement comes as part of the plaint, there is no scope of considering the plaint in particular manner and it has to be read on its own. At this stage this Court reading through the impugned order further finds, the trial court has refused to take cognizance of statement of the plaintiff through counter, as there is no foundation to support to such claim in the counter even. For the opinion of this Court the application of the Petitioner at Annexure-3 remains unfounded as such uncalled for and thus this Court finds, there is right rejection of the application of the Petitioner by the trial court requiring no interference in the same.

5. The C.M.P. stands dismissed.

(Biswanath Rath)
Judge

