

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.371 of 2022

Krushna Chandra Nayak

....

Petitioner(s)
Mr.S.K.Panda, Advocate

-versus-

Sanjay Ram Chandra Nayak

....

Opp.Party(s)

CORAM:
JUSTICE BISWANATH RATH

ORDER
05.05.2022

Order No.

1

1. Heard the submission of learned counsel appearing for the petitioner.

2. This Civil Miscellaneous Petition involves rejection of an application on behalf of the petitioner involving I.A. under the provision of Order 39, rule 1 & 2 of the Code of Civil Procedure seeking a direction from the trial court to cross examine the petitioner involving the I.A. involved in the exercise by the trial court. Taking this Court to the petition under Order 39. Rule 1 & 2 of the Code of Civil Procedure, supported with affidavit and objection to such petition by the petitioner as opposite party filed in trial court also in support of affidavit, a claim made by learned counsel for the petitioner in support of the application was rejected that once there is allegation in the opposite parties objection on suppression of material facts and the petitioner moving such application, there ought to have scope of cross examination of such party. As a consequence, there is submission that there has been illegal rejection of such application by the trial court and thus a request is made for interfering in the impugned order and upon setting aside the same giving appropriate direction.

3. Considering the submission of learned counsel appearing for the petitioner, opposite party involving an application under Order 39, rule 1 & 2 of the Code of Civil Procedure, this Court finds undisputedly

there is claim and counter claim to such claim in support with affidavit. Petitioner putting such application is not interested to lead evidence. Once petitioner making such application is not interested to give evidence to support his case, there is no provision for cross-examination of such witness. Petitioner if so interested being the opposite party to establish his such contention in the objection to the application involved, it may be open to such party to lead evidence on his behalf in an attempt to satisfy his own contentions.

4. In the circumstance, this Court finds there is no room for cross-examination of a person/witness who has not come to doc.

5. Keeping the above in view, this Court finds there is no infirmity in the impugned order requiring to be interfered with. Consequently, the Civil Miscellaneous Petition stands dismissed.

(Biswanath Rath)
Judge

Sks

