

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.4135 OF 2009

Rama Chandra Behera & ors.

....

Petitioners

Mr.J.K.Mishra, Adv.

-versus-

Smt.Kuni Dei

....

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

ORDER

18.4.2022

Order

No.

4.

1. Heard learned counsel for the Petitioners. In spite of notice to the O.P. and appearance of a set of Counsel, nobody is present to defend her.

2. The Writ Petition involves an order rejecting the Application under Order 9 Rule 7 of C.P.C. by the Defendants by order dated 10.5.2005, vide Annexure-5.

3. Taking this Court to the Application under Order 9 Rule 7 of C.P.C. and the reasons assigned in the impugned order, learned counsel for the Petitioner prayed this Court for interfering with the impugned order and setting aside the same.

4. Considering the submission of the learned counsel for the Petitioner and taking note of the fact that the Civil Suit involved herein is still pending and the Defendants have already completed

their depositions, the trial court in considering the Application under Order 9 Rule 7 of C.P.C. could have considered restoration of the Suit while also protecting the interest of the Defendants for their suffering involving loss of period and unnecessary facing litigation for no fault of them.

5. Keeping this in view and the nature of the Suit involved required to be decided on contest of the Parties, this Court interfering with the impugned order sets aside the same and thereby allows the Application under Order 9 Rule 7 of C.P.C. at the instance of the Defendants. For restoration of the position of the Defendants, this Court is also to keep in mind the suffering of the Plaintiff in the meantime for no fault of her and accordingly, while allowing the Application under Order 9 Rule 7 of C.P.C. imposes cost of Rs.4500/- (rupees four thousand five hundred) to be to each of the Plaintiffs within one month. On filing of receipt of payment, the position of the Defendants, Petitioners herein will be restored and since there is already progress in the evidence from the Plaintiff side, the Defendants will be provided with opportunity of cross-examination further the scope of evidence from their side. The trial court is also directed to conclude the proceeding in C.S.

No.79/2002-I within a period of six months from the date of communication of this order.

6. The Writ Petition stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout

