

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.922 of 2017

Subrata Das & Anr.

....

Petitioner(s)

Mr. P.K. Sahoo,
Advocate

-versus-

Samarendra Kumar Das & Ors.

....

Opposite Party(s)

CORAM:

JUSTICE BISWANATH RATH

ORDER

09.05.2022

Order No.

04.

1. This C.M.P. involves rejection of an application U/o.18 Rule 17 of C.P.C. at the instance of the Defendant Nos.1(A) & 1(B) in an attempt to have the scope of further cross-examination of P.W.1.
2. Taking this Court to the plea taken in the application at Annexure-3 Mr. Sahoo, learned counsel for the Petitioners submitted that even though these defendants have already cross-examined the P.W.1, but for the cross-examination of the P.W.1 undertaken by the counsel in absence of proper instruction from the parties who were even residing outside the jurisdiction of the Court, there is necessity for bringing back the P.W.1 to the dock for further cross examination. It is, in this view of the matter, Mr. Sahoo, learned counsel for the Petitioners submitted that unless the P.W.1 is further cross-examined and unless certain additional issues are brought to be answered by entering into further cross-examination, there may not

be effective adjudication of the suit and therefore, these defendants will be seriously prejudiced.

It is, in the above circumstance, Mr. Sahoo, learned counsel for the Petitioners contended that there has been no proper consideration of the request of the Defendant Nos.1(A) & 1(B) by the trial court, for which the impugned order requires to be interfered with.

3. This Court here finds, in spite of notice, the O.P.1 the plaintiff so also the other defendants did not appear. This case is, therefore, decided only hearing the learned counsel for the Defendant Nos.1(A) & 1(B) and also on perusal of the materials available on record.

4. Considering the submission made by the Mr. Sahoo, learned counsel for the Petitioners, this Court finds, these defendants have specific ground and since the cross-examination of P.W.1 was undertaken without instruction from the parties, this Court looking to the statements made in paragraph nos.2 & 3 finds, there should have been appropriate consideration of such application and failure of accepting the claim of these defendants may land in no effective adjudication of the suit and unnecessarily involving such issues in higher forum. In the process, this Court while setting aside the order dated 19.07.2017 at Annexure-1 and further considering that there is belated attempt to recall the P.W.1 and there is suffering of the plaintiff for his no fault, this Court while allowing the C.M.P. awards a cost of Rs.1,000/- (rupees one thousand) to be paid to the plaintiffs to mitigate their sufferings for the belated attempt by the Defendant Nos.1(A) & 1(B). For the quashing of the order at Annexure-1, this Court directs the Defendant Nos.1(A) & 1(B) to appear before the trial court along with a copy of this order on 18th

May, 2022 and upon their appearance the trial court shall fix the date of further cross-examination of the P.W.1, which is, however, subject to payment of cost indicated hereinabove.

5. The C.M.P. stands disposed of with the above direction.

(Biswanath Rath)
Judge

Ayaskanta Jena

