

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.397 of 2022

Bhabani Sankar Mohanty

....

Petitioner(s)

Mr.P.K.Rath,
Advocate

-versus-

Niranjan Sahoo

....

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
11.05.2022**

Order No.

01

1. Heard Mr.Rath, learned counsel appearing for the petitioner involving an allegation that despite proper attempt for service of notice on defendant and despite the defendant is very much available on the address given, he is deliberately avoiding to receive notice. Finding no scope for service of notice on the defendant in C.S.No.1494 of 2021, plaintiff-petitioner appears to have filed an application purporting under Order 5, rule 20 of the Code of Civil procedure for substituted service of notice on the defendant. Even though there is no date at the end of such petition but, however, it appears from Office copy of the petitioner disclosing such an application to have been brought on the court file on 17.11.2021. It is at this stage of the matter, taking this Court to the order-sheet at Anenxure-1 dated 20.04.2022, Mr.Rath, learned counsel alleged that even assuming there was a contingency for a direction for taking steps for service of notice on defendant, since there was already an application available at the instance of the plaintiff pending consideration of the trial Court, nothing prevented the trial court to consider such application and pass order accordingly. It is further alleged that while keeping pending such application, it was not appropriate on the part of the trial court in passing the order dated

20.04.,2022 again asking the petitioner to take proper steps even after knowing there is no possibility of service of notice on the defendant otherwise.

2. Considering serious allegation involved, this Court observes in the event petitioner had already an application pending vide Annexure-2 for considering the prospect of notice on defendant under the provision of Order 5, rule 20 of the Code of Civil Procedure, the trial court should have proceeded to pass order on 20.4.2022 keeping hold the application at Annexure-2. In the circumstance, this Court directs the trial court in the event the Office is already in receipt of petition at Annexure-2 herein stated to have been filed sometimes in the month of October or November, 2021, the trial court shall do well in undertaking exercise of disposing of such application by completing such exercise at least within a period of seven days of production of an authenticated copy of this order and based on decision of such application the trial court shall make an attempt to modify the order dated 20.04.2022, dependant on the contingency involving petition pending at its end.

3. The Civil Miscellaneous Petition stands disposed of with the observation made hereinabove.

(Biswanath Rath)
Judge

Sks