

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.20331 OF 2009

Manoranjan Saha & ors.

....

Petitioners

Mr.D.Mohapatra, Adv.

-versus-

State of Orissa & ors.

....

Opposite Party(s)

Mr.S.P.Panda, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
19.4.2022**

Order No.

03.

1. Heard learned counsel for the Parties.

2. The dispute involves rejection of the Application under Order 9 Rule 9 of C.P.C. at the instance of the Plaintiffs filed with a prayer to set aside the order of dismissal of the Suit dated 4.5.2007 and the consequential rejection of the Appeal in FAO No.25/2 of 2008.

3. Taking this Court to the Application under Order 9 Rule 9 of C.P.C., Mr.Mohapatra, learned counsel for the Petitioners demonstrated that on the effective date, there was complete restriction on the Petitioners by a Bandh Call by some political parties taking place in the area preventing the Advocates as well as

the Plaintiffs from taking any step. Mr.Mohapatra further taking this Court to both the Applications and looking to the nature of the Suit, submitted, even assuming on particular date, the Plaintiffs remained absent even their Counsel also remained absent, looking to the nature of Suit and the only remedy for the purpose and at least one more adjournment should have been made, even the Court considering there was difficulty faced by the O.Ps. for non-appearance of the Plaintiffs, there could have been order with cost but the Suit under no circumstance should have been dismissed. Mr.Mohapatra, learned counsel for the Petitioners also contested the orders on the premises that for the Plaintiff-Petitioners having no other alternative, their valuable civil rights are getting affected for the dismissal of the Suit for default. It is alleged, both the Courts below have failed in appreciating the broader issue involved therein and therefore, there is illegal dismissal of both the proceedings.

4. Mr.S.P.Panda, learned Additional Government Advocate appearing for O.Ps.1 & 2 however taking the case of O.Ps.1 & 2 submitted that the Plaintiffs suffered for their own laches and the Defendants should not be held responsible for the same. Further taking this Court to the discussions in the impugned orders, Mr.Panda, learned Additional Government Advocate contended that

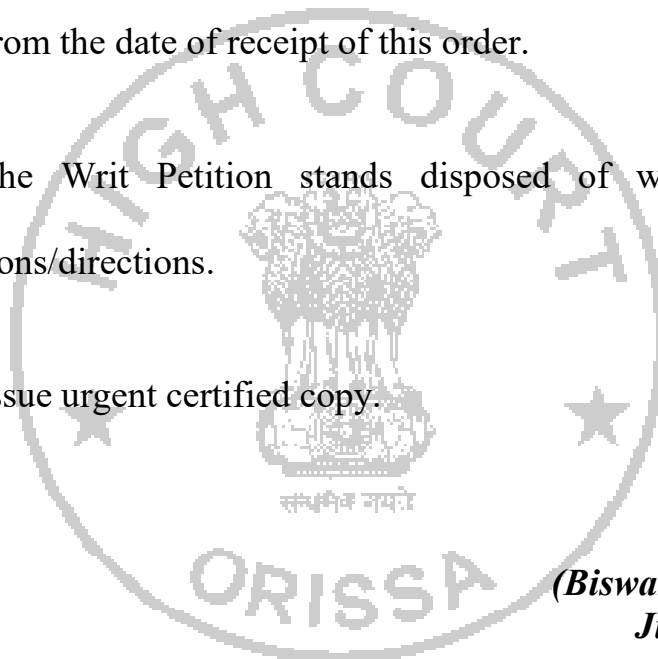
both the Courts below have clearly observed, the Plaintiffs failed in establishing a case for their default on the effective date. It is in this view of the matter, Mr.Panda objected for entertaining the Writ Petition.

5. Considering the rival contentions of the Parties, this Court finds, the Suit involving declaration of the right, title and interest over the land involved therein. The Suit was filed in the year 2002 on its posting on 4.5.2007, the Plaintiffs failed to attend the proceeding. It appears, the Application under Order 9 Rule 9 of C.P.C. was filed within time not only that to the Application of the Plaintiffs under Order 9 Rule 9 of C.P.C., State did not file any counter but however participated in course of hearing and cross-examination of the witnesses. This Court here finds, there was no counter at least opposing the move of the Petitioners. Further looking to the time gap, the nature of the Suit and further no counter to such Application of the Petitioners, this Court finds, there is no appreciation of all these aspects by either of the Courts. Further for the Plaintiffs not finding any other alternate mode to bring such issue even by filing a fresh suit, this Court finds, in the interest of justice, the Application under Order 9 Rule 9 of C.P.C. should have been allowed however subject to award of cost.

6. This Court, accordingly interfering with the impugned orders passed in CMA No.74/2007 and also in F.A.O. No.25/2 of 2008 sets aside the same. As a consequence, this Court allows the Application under Order 9 Rule 9 of C.P.C. and directs for re-opening of the Suit as was on 4.5.2007. The Suit bearing T.S. No.44 of 2007 since filed in 2007, Parties are directed not to take unnecessary adjournment and the Suit be also disposed of at least within a period of nine months from the date of receipt of this order.

7. The Writ Petition stands disposed of with the above observations/directions.

8. Issue urgent certified copy.



(Biswanath Rath)
Judge

M.K.Rout