

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.1066 OF 2011

Gouranga Biswal

....

Petitioner

Mr.K.P.Mohanty, Adv.

-versus-

Bharat Kishore Rout & ors.

....

Opposite Party(s)

Mr.D.Deo, Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
28.2.2022**

**Order
No.**

05.

1. Heard learned counsel for the Petitioner.
2. Learned counsel for the Petitioner argues the case involving a challenge to the order at Annexure-5 allowing introduction of documents mentioned in Annexure-3 being claimed by Defendant Nos.1 & 2. In his challenge to the order at Annexure-5, learned counsel for the Petitioner taking this Court to the Application under Annexure-3 contended that there is simply an Application of Defendant Nos.1 & 2 requesting the trial court for bringing such documents one being certified copy of the complaint petition dated 23.10.35 and the other one a compromise petition dated 31.10.35 in a proceeding No.1407/35. In reference to the documents, learned counsel for the Petitioner submitted that there is no head and tail of such document by way of pleading, further the documents sought to be incorporated even there was no explanation in such Application

on the relevancy of introduction of such document. It is on this premises, learned counsel for the Petitioner contesting the order at Annexure-5 sought for intervention of this Court and setting aside the same.

3. In spite of sufficiency of notice and appearance of a set of Counsel, there is no appearance on behalf of the O.Ps. This matter is pending since 2011 with an order of stay of the trial court proceeding since 27.1.2011.

4. This Court here records the statement of the learned counsel for the Petitioner that though the Civil Suit No.79 of 2007 is still pending in a different Court, taking the statement of the learned counsel for the Petitioner and going through the written statement of Defendant Nos.1 & 2 also available in the Writ Petition, vide Annexure-2, the entire reading of the Writ Petition, this Court nowhere finds any pleading at least involving the documents sought to be brought by way of Exhibit available at Page-26 of the Brief. For the opinion of this Court, exhibiting documents beyond pleading in the written statement is not only irrelevant for the purpose of evidence but in absence of pleading, there is also no scope for consideration of such document even if it is brought by way of Exhibit. It is at this stage of the matter, looking to the request for bringing such documents available at Page-26 of the Brief, this Court finds, there is absolutely no pleading even requiring such

documents even for effective adjudication. Further reading the impugned order, this Court finds, the trial court instead of finding the fundamental in introduction of such documents has examined admissibility of such documents. In the circumstance, for an attempt of introduction of new documents in absence of pleading in the written statement and even in absence of bringing any amendment, if it is so required, this Court finds, there is casual decision involving the Application at Page-26 of the Brief and there has been mechanical disposal, vide Annexure-5.

5. In the result, this Court interfering with the impugned order at Annexure-5 sets aside the same and rejecting the claim of Defendant Nos.1 & 2, vide Annexure-3, vacates the restraint order of this Court dated 27.1.2011 passed in Misc. Case No.845 of 2011. This Court directs the Civil Judge (Sr.Divn.), Salipur, in the event the Suit bearing C.S. No.79 of 2007 has been transferred to Salipur and still pending, to take all possible attempts for disposal of the Suit involved herein at least within a period of six months from the date of communication of this order by the Petitioner.

6. With the above order, the Writ Petition stands disposed of.

(Biswanath Rath)
Judge

M.K.Rout