

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.448 OF 2022

Manas Bai

..... Petitioner

Mr.D.K.Mohapatra, Adv.

-versus-

Kalandi Das & ors.

..... Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
19.5.2022**

**Order
No.**

1. Learned counsel for the Petitioner.
2. Matter involves rejection of the Application under Order 39 Rule 7 of C.P.C., undisputedly Order 39 Rules 1 & 2 Application is pending after the objection being filed by the Opponent.
3. Learned counsel for the Petitioner advancing his submission submitted that unless the report under Order 39 Rule 7 of C.P.C. is presented in trial court, the Application under Order 39 rules 1 & 2 of C.P.C. cannot see progress. In the circumstance, learned counsel for the Petitioner claimed, there has been wrong Consideration of the Application of the Petitioner and unless, this Court interferes and sets aside the same, it will set bad example.
4. Considering the submission of the learned counsel for the Petitioner and taking into consideration the position involving the Application under Order 39 Rules 1 & 2 of C.P.C. hearing is yet to

commence, for the opinion of this Court, if the position involving Order 39 Rules 1 & 2 stands affidavit versus affidavit, nothing prevents the Parties interested in bringing evidence material and/or oral to establish their such case. Further for the opinion of this Court, unless the Parties are unable to satisfy their case through evidence, there is no scope for entering into the scope of Order 39 Rule 7 of C.P.C. In the circumstance, this Court finds, though there is rejection of the Application under Order 39 Rule 7 of C.P.C. and for the Application of this nature premature at this particular stage, even though this Court declines to interfere with such order keeps the scope under Order 39 Rule 7 of C.P.C. open to be availed in the event there is such contingency after the evidence is closed by the Parties.

5. The CMP stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout