

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 283 of 2021

Binayak Dash

.....

Petitioner

Mr. Ranjan Kumar Rout, Advocate

-versus-

G.Swati Patra

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.08.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 5th March, 2021 (Annexure-9) passed by learned Civil Judge (Senior Division), Phulbani in CS No.14 of 2016, whereby he vacated the order dated 18th February, 2019 (Annexure-5) passed under Section 10 CPC read with Section 151 CPC staying further proceeding of CS No.14 of 2016.
3. Mr. Rout, learned counsel for the Petitioner submits that in a petition filed by Defendant No.4 under Section 10 CPC, learned trial Court taking into consideration that RSA No.352 of 2017 relating to self-same property between the self-same parties is pending before this Court, stayed further proceeding of CS No.14 of 2016 vide order dated 18th February, 2019 (Annexure-5). Subsequently, the Defendants filed an application to vacate the said order on the plea that the stay order operating cannot continue beyond six months pursuant to judgment of the Hon'ble Supreme Court in the case of *Asian*

Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation, reported in (2018) 16 SCC 299. It is his submission that the ratio decided in ***Asian Resurfacing of Road Agency Private Limited (supra)*** is not applicable to the case at hand, as the order of staying further proceeding of the Civil Suit was not passed by any higher forum, but by the same Court. However, RSA No.352 of 2017 is pending before this Court involving the self-same property as well as parties. The effect of stay under Section 10 CPC is different than the order staying further proceeding in the suit passed by any higher forum. In the event, further proceeding of CS No.14 of 2016 is not stayed there may be a complex situation and it may lead to multiplicity of litigations. It may also operate as res judicata in deciding RSA No.352 of 2017. In view of the above, he prays for setting aside of the impugned order and stay of further proceeding of CS No.14 of 2016 till disposal of RSA No.352 of 2017 pending before this Court.

4. Although the Opposite Party No.1 is represented by learned counsel but none appears on her behalf at the time of call.

5. Taking into consideration the submission made by learned counsel for the Petitioner and the ratio decided in the case of ***Asian Resurfacing of Road Agency Private Limited (supra)*** this Court is of the considered opinion that the effect of order of stay of further proceeding in the suit in exercise of power under Section 10 CPC is different than the order passed by the higher forum staying further proceeding of the suit. Section 10 CPC clearly stipulates that no Court shall proceed with the trial of any suit in which the matter in issue is also

directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court. Order passed under Section 10 CPC should not be evaluated in terms of the ratio decided in *Asian Resurfacing of Road Agency Private Limited (supra)*. Hon'ble Supreme Court in the aforesaid case law has discussed the matter in detail with regard to pendency of trial due to the order of stay passed by the higher forum. The same is not the situation in the case at hand.

6. Thus, this Court is of the considered opinion that the ratio decided in *Asian Resurfacing of Road Agency Private Limited (supra)* is not application to the case at hand.

7. Accordingly, order dated 5th March, 2021 (Annexure-9) passed by learned Civil Judge (Senior Division), Phulbani in CS No.14 of 2016 is set aside and order dated 18th February, 2019 passed by learned Senior Civil Judge, Phulbani in CS No.14 of 2016 is restored and shall continue till disposal of RSA No.352 of 2017 pending before this Court, unless the same is varied by a competent Court of law.

6. The CMP is disposed of accordingly.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge