

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.657 of 2019

Biswanath Rana

....

Petitioner(s)

Mr.M.Mohanty,
Advocate

-versus-

Asish Kumar Das

....

Opposite Party(s)

Mr.D.P.Mohanty,
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
20.04.2022

Order No.

04. 1. Heard the submission of Mr.M.Mohanty, appearing for learned counsel for the petitioner and Mr.D.P.Mohanty, appearing for learned counsel for opposite party.
2. Matter involves a decision at Annexure-3 allowing acceptance of counter claim. Advancing submission Mr.M.Mohanty, learned counsel for the petitioner brings to the notice of the Court that even though the counter claim was filed in time and with clear disclosure that there has been already payment of desired court fee. The Court fee being paid much later on, the counter claim has been accepted almost after eight years bringing to the notice of the impugned order.
3. Reading through the same, Mr.Mohanty, learned counsel also alleged that there has been no discussion by the Court concerned in allowing such application. Mr. Mohanty, learned counsel further also brings to the notice of the Court at the stage of the proceeding that there has already been examination of three witnesses from the side of plaintiff. In the event of allowing the counter claim at this stage

Mr.Mohanty, learned counsel submitted that there will also be inconvenience in the matter of evidence. It is in the above background Mr.Mohanty, learned counsel objects the impugned order and requests this Court for interfering in the same and setting aside the same.

4. Mr.D.P.Mohanty, learned counsel for the opposite party in his opposition submitted that there is no dispute that counter claim was filed in time, even assuming there has been delay in payment of the required court fee since the suit is still pending, there is no obstruction in entertaining the counter claim. On the aspect of stage evidence bringing an obstruction Mr.Mohanty, learned counsel for the opposite party contended in the event counter claim comes on record, nothing prevents the petitioner not only to file W.S. but also approaching the Court for reopening the evidence.

5. Mr.Mohanty, learned counsel however did not dispute to the manner of the disposal of the matter involved herein by the trial Court. There is however no dispute for taking help of settled position of law, the counter claim even can be accepted at a subsequent stage. Mr.Mohanty, learned counsel contended that there is no illegality in the impugned order requiring to be interfered.

6. Considering the rival contentions of the parties, this court finds a counter claim was brought in time may be with non-payment of the desired court fee. There has been payment of court fee subsequently. After the Court fee is cleared there cannot be any impediment in accepting the same. Further in the event there is delayed approach in bringing counter claim and in the meantime the counter claim has been accepted, this Court finds there is no prevention on the part of the plaintiff in applying for recalling of the witnesses, the impugned order even permitted the petitioner to file W.S.

7. In the circumstance, this Court finds there is no prejudice to the petitioner otherwise through impugned order, on the other hand in such development there is possibility of effective adjudication of the suit as well as counter claim. This Court however taking to the stage of allowing of counter claim finds the trial court, while considering such aspect should have taken care of the suffering of the plaintiff and unnecessary reopening of the evidence and at least while allowing such application should have been awarded cost to be paid by defendant to the plaintiff. It is keeping the above in view and here this Court finds even though there is no infirmity in the impugned order thus while maintaining the same, this Court considers the plight of the plaintiff forcing him to bring in written statement long after the evidence already commenced and there is requirement for reopening of the evidence process already undertaken, this Court considers grant of cost in allowing such application.

8. This Court accordingly directs the defendant involve to pay cost of Rs.2,000(rupees two thousand) to the plaintiff to be paid by defendant No.2 at least within a period of two weeks hence. On filing of receipt, the trial proceeding shall recommence. In the event the plaintiff files an application for reopening the counter claim. If same will be allowed with an opportunity to the opposition. Plaintiff has not filed W.S. involving in the counter claim will file W.S. to counter claim within a period of three weeks of payment of the cost. In the event any application is filed requiring reopening of the evidence, same shall be allowed for further opportunity to both side.

9. With this observation, the CMP stands disposed of.

(Biswanath Rath)
Judge