

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1733 OF 2016

Golaka Bihari Arya

.... Petitioner

Mr. D.P. Mohanty, Advocate

-versus-

Anadi Ved Sebak @ Banprasthi Anadi

.... Opp. Parties

Ved Sebak @ Swami Avedananda

Saraswati and others

Mr. Satrughna Dash, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

29.11.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 5th August, 2016 (Annexure-4) passed by learned Civil Judge (Junior Division), Aul in C.S. No. 58 of 2014, whereby an application filed by the Defendant No1-Petitioner with a prayer to direct the Plaintiff-Opposite Party No.1 for production of certain documents has been rejected.
3. Mr. Mohanty, learned counsel for the Petitioner submits that the Defendant No.1 is the Petitioner in this CMP. It is categorically averred in the plaint that the Defendant No.1 voluntarily tendered his resignation, which was accepted by the majority members of the trust vide resolution dated 2nd April, 2010. Thus, said two documents are required to be verified by the Defendant No.1 to file written statement. The Plaintiff-Opposite Party No.1 took a plea that said documents are not in his possession and the same are with the Auditor. Learned trial

Court accepting such submission rejected the petition filed by the Petitioner. The Petitioner has never tendered his resignation. Thus, the question of acceptance of his resignation vide resolution dated 2nd April, 2010 does not arise at all. Unless those documents are produced by the Plaintiff, the Petitioner cannot file an effective written statement for just adjudication of the suit. Hence, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

4. Mr. Dash, learned counsel for the Opposite Party No.1-Plaintiff submits that the plea taken by the Petitioner is only to delay the filing of the written statement and to linger the proceeding. If the Petitioner has not tendered his resignation voluntarily, he may take such plea in his written statement, which can be adjudicated in the suit itself. Compelling the Petitioner to produce any document to file the written statement is not sustainable. Thus, learned trial Court has committed no error in rejecting such application.

5. Taking into consideration the rival contentions of the parties, this Court finds that amongst other, the Plaintiff-Opposite Party No.1 has taken a plea that the Defendant No.1-Petitioner has tendered his resignation from the membership of the trust voluntarily and his resignation was accepted by majority members of the trust vide resolution dated 2nd April, 2010 and consequently, subsequent amended trust deed was executed on 26th May, 2011.

6. As submitted by Mr. Dash, learned counsel for the Plaintiff-Opposite Party No.1, since the Defendant No.1-Petitioner denies that he has never tendered his resignation

voluntarily, the same could have been taken as a plea in the written statement without insisting upon the Plaintiff to produce any document.

7. In that view of the matter, this Court finds that learned trial Court has committed no error in rejecting the petition to direct the Plaintiff-Opposite Party No.1 to produce documents. Since the suit is of the year, 2014 and filed for eviction, learned trial Court shall make an endeavour for early disposal of the suit giving opportunity of hearing to the parties concerned.

8. Accordingly, the CMP being devoid of any merit stands dismissed.

9. The interim order dated 6th December, 2016 passed in Misc. Case No.1830 of 2016 stands vacated.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks