

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.481 OF 2022

Sakila Bano

Petitioner

Mr. Monomoy Basu, Advocate

-versus-

Sk. Usman

.... ***Opp. Party***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No.

27.06.2022

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 5th May, 2022 passed by learned Civil Judge(Senior Division), Balasore in CMA No.554 of 2020 (37 of 2020) arising out of C.S. No.595-966 of 2018, whereby he rejected an application filed under Order IX Rule 4 of C.P.C. read with Section 5 of the Indian Limitation Act, 1963 praying, inter alia, to recall the order of dismissal of the counter claim filed by the Petitioner-Defendant No.3.
3. Mr. Basu, learned counsel for the Petitioner submits that by virtue of the dismissal of the counter claim, a valuable right of the Petitioner-Defendant No.3 is being taken away. In the counter claim, the Defendant No.3 prayed for declaration of her right, title and interest over Schedule 'B' and 'C' property, which she received from her mother by virtue of an oral gift. Relying upon the decision in the case of ***Hafeeza Biba and another –v- Shaikh Farid (dead) by Lrs. and others*** reported in AIR 2011 SCC 1695, Mr. Basu, learned counsel for the

Petitioner submits that in Mohameddan law, an oral gift (Hiba) is permissible and it requires no execution of formal document or registration. In view of the impugned order, the Petitioner-Defendant No.3 has become remediless. In view of the above, Mr. Basu, learned counsel for the Petitioner submits that interest of justice will be best served if the Petitioner is permitted to move a fresh application with better particulars for setting aside the order dated 14th January, 2020 passed in C.S. No.595-966 of 2018, whereby the counter claim of the Petitioner was rejected.

4. Taking into consideration the submission made by learned counsel for the Petitioner, this Court disposes of the CMP with an observation that in the event, the Petitioner files a fresh application under Order IX Rule 4 C.P.C. to recall/ set aside the order dated 14th January, 2020 passed in C.S. No.595-966 of 2018 rejecting his counter claim, the same shall be considered in accordance with law giving opportunity of hearing to the parties concerned.

5. With the aforesaid observation, this CMP is accordingly disposed of.

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

(K.R. Mohapatra)
Judge