

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.961 of 2018

Benu Charan Behera

....

Petitioner(s)

Mr. L. Mishra,
Advocate

-versus-

Baishnaba Behera & Ors.

....

Opposite Party(s)

Mr. D.P. Mohanty,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
18.04.2022**

I.A. No.117 of 2022

Order No.

04.

1. This I.A. is filed for condonation of delay.
2. Considering the grounds stated in this I.A., the delay in filing the petitions for substitution in respect of the deceased Petitioner and setting aside the abatement stands condoned.
3. The I.A. stands disposed of accordingly.

***(Biswanath Rath)*
Judge**

I.A. No.115 of 2022 & I.A. No.116 of 2022

05.

1. These I.As have been filed for substitution and setting aside the order of abatement in respect of the deceased Petitioner.
2. Considering the genuine grounds taken in the applications, this Court allows this I.As.

3. Both the I.As stand disposed of.

(Biswanath Rath)
Judge

C.M.P. No.961 of 2018

06. 1. The impugned order involves rejection of an application U/o.6 Rule 17 of C.P.C. being filed at the instance of the Plaintiff.
2. Reading through the proposed amendment a submission is made by the learned counsel for Petitioner that not only the facts proposed through the amendment are relevant, but there is also scope for the defendants to come up with their additional written statement.
- It is, in this view of the matter, learned counsel for the Petitioner alleges that there has been no proper consideration of the amendment application involved herein.
3. Learned counsel for the Opposite Party No.1, however, referring to the disclosures in the impugned order at Annexure-6 contended that the application not only involves taking away of earlier denials but similar application have also been come to be rejected being filed by the plaintiff. It is further also urged that for reversal tactic adopted by the Petitioner through the plaint pleadings, there may be difficulty in effective adjudication of the case. It is, in this view of the matter, learned counsel for the Opposite Party No.1 attempted to object the claim of the Petitioner and support the impugned order.
4. Considering the rival contentions of the parties and looking to the position of the suit to the extent evidence has not been commenced, this Court observes, further pleadings brought by way of amendment will land in effective adjudication of the dispute and the pleadings brought through amendment can never be treated as admission.

Be that as it may, this Court also finds, in the event there has been any reversal tactics, nothing prevents the defendants to bring their response in the additional written statement and this Court leaves it open for the trial court to consider the same. It is, in this view of the matter, this Court finds, there is no proper consideration of the amendment aspect by the trial court. This Court, therefore, while setting aside the impugned order and allowing the amendment application, directs the plaintiffs to file consolidated plaint at least within a period of seven days from the date of service of a copy of additional written statement to be filed within two weeks hence.

5. The C.M.P stands disposed of with the above direction.

(Biswanath Rath)
Judge

