

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. No.515 of 2022

Santi Manjari Routray ***Petitioner***
Mr. Pabitra Kumar Nayak, Advocate

-versus-

Bank of Baroda and others ***Opp. Parties***
Mr. Subhashis Mishra, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
05.09.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 8th February, 2022 (Annexure-4) passed by learned 5th Additional District Judge, Bhubaneswar in FAO No.55 of 2019, whereby the appeal was dismissed confirming the order dated 25th July, 2019 (Annexure-3) passed by learned 2nd Additional Civil Judge (Senior Division), Bhubaneswar in IA No.1 of 2019 (arising out of CS No.505 of 2019) rejecting an application under Order XXXIX Rules 1 and 2 CPC.
3. Mr. Nayak, learned counsel for the Petitioner submits that the suit has been filed by the Petitioner for specific performance of contract. During pendency of the suit, Plaintiff/Petitioner filed an application under Order XXXIX Rules 1 and 2 CPC to restrain the Opposite Party-Bank from vacating the suit premises. Said IA was dismissed on contest vide judgment dated 25th July, 2019. Assailing the same,

Petitioner preferred the Appeal under Order XLIII Rule 1 (r) CPC in FAO No.55 of 2019, which was also dismissed with cost of the suit.

4. Mr. Nayak, learned counsel for the Petitioner further submits that although there is specific clause in the rent agreement to the effect that it can be determined giving three months' prior notice, but the Opposite Party-Bank by serving two months' notice contemplates vacation of the suit premises, which will cause irreparable loss to the Petitioner. She has invested huge amount to construct the suit premises as per the requirement of the Bank-Opposite Parties. If the Opposite Party-Bank is allowed to vacate the premises without complying with determination clause of the rent agreement, the Petitioner has a *prima facie* case in her favour and the balance of convenience leans in her favour. Learned trial Court as well as the learned appellate Court failed to appreciate this material aspect. Hence, he prays for setting aside the impugned judgment and order under Annexure-4 and seeks for a direction to restrain the Opposite Party-Bank from vacating suit premises.

5. Mr. Mishra, learned counsel for Opposite Party-Bank vehemently objected to the above submission and contended that three months prior notice has been served on the Petitioner. The suit house has been vacated by the Opposite Party-Bank since long. Hence, entertaining the CMP will be an academic one. Further, the Petitioner will not suffer any irreparable loss if the order of injunction is refused. As such, learned trial Court as well as the appellate Court has committed no error in dismissing the application under Order XXXIX Rules 1 and 2 CPC..

6. Taking into consideration the submissions of learned counsel for the parties and on perusal of record, this Court finds that Opposite Party-Bank was a tenant under the Petitioner by virtue of a rent agreement/lease deed executed between the parties. The allegation of the Petitioner regarding violation of the notice clause of the said rent agreement is a matter to be considered in the suit. Even if the injunction order is refused, the Petitioner will not suffer any irreparable loss as the loss, if any can be compensated in terms of money. On the other hand, Opposite Party-Bank will suffer irreparable loss if an order restraining it to vacate the suit premises is passed. It is also the submission of Mr. Mishra, learned counsel the Opposite Party-Bank that it has already vacated the suit premises since long. Thus, entertaining the CMP at this stage will be an academic one. However, the direction of learned trial Court to pay cost of the suit in an appeal under Order XLIII Rule 1 (r) CPC is misconceived. Hence, the said portion of the impugned order directing the Petitioner pay the cost of the suit is set aside.

7. The CMP is allowed to the aforesaid extent.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge