

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 516 OF 2022

Jagadish Chandra Mohapatra

.....

Petitioner

Mr. Ashok Das, Advocate

-versus-

Manorama Tripathy and another

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.08.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. Order dated 22nd April, 2022 passed by learned Civil Judge (Senior Division), Berhampur in C.S. No.269 of 2008 is under challenge in this CMP.
3. Mr. Das, learned counsel for the Petitioner submits that earlier vide order dated 5th January, 2019 passed in C.S. No.269 of 2008, three suits, viz. C.S. No.269 of 2008, C.S. No.77 of 2002 and C.S. No.109 of 2002 were directed to be heard analogously by learned Senior Civil Judge, Berhampur. Subsequently, a petition under Section 8 of the Arbitration and Conciliation Act, 1996 was filed in C.S. No.77 of 2002 to refer the matter for arbitration. The said application being rejected vide order dated 17th August, 2007, the Petitioner came up before this Court in W.P.(C) No.10958 of 2007. This Court vide order dated 24th June, 2019 allowed the writ petition by setting aside the order dated 17th August, 2007 passed by learned Civil Judge (Senior Division), Berhampur in C.S. No.77 of 2002 and remitted the matter back to the learned trial Court for fresh consideration of the petition after giving opportunity of hearing to the parties

concerned. Accordingly, C.S. No.77 of 2002 was referred to the Arbitrator, which is pending before him. At this juncture, the Petitioner filed an application dated 22nd March, 2022 (Annexure-6) to stay the proceeding of C.S. No.269 of 2008 and C.S. No.28 of 2007 awaiting outcome of the arbitration in C.S. No.77 of 2002. The said petition was rejected on the ground that similar such application was rejected earlier and the said order was not assailed. Learned trial Court also observed that no document was filed by the Petitioner to indicate the status of the arbitration proceeding referred to the Arbitrator.

4. Mr. Das, learned counsel for the Petitioner submits that unless the proceedings of the aforesaid two suits are stayed awaiting outcome of the arbitration in C.S. No.77 of 2002, there is every likelihood of multiplicity of proceeding and conflicting the orders for which the Petitioner will be highly prejudiced. Learned trial Court failed to appreciate the same and passed the impugned order, which is not sustainable in the eyes of law. Since the aforesaid three suits were directed to be heard analogously and one of the suits has been referred to the arbitration, interest of justice will be best served, if the proceedings of rest two suits are stayed till disposal of the arbitration proceeding in C.S. No.77 of 2002. He, therefore, prays for a direction to set aside the impugned order and to stay further proceedings in C.S. No.269 of 2008 and C.S. No.28 of 2007.

5. Upon hearing learned counsel for the Petitioner, it is apparent that C.S. No.269 of 2008, C.S. No.77 of 2002 and C.S. No.109 of 2002 were directed to be heard analogously, but

pursuant to the direction of this Court in W.P.(C) No.10958 of 2007, a petition filed under Section 8 of the Act was reconsidered in C.S. No.77 of 2002 and the matter was referred to the Arbitrator. The Petitioner has not raised any objection to the same nor has challenged the said order. Rest two suits are pending for adjudication. Further, C.S. No.28 of 2007 was never directed to be heard along with aforesaid three suits. It also appears that similar such application for stay of proceeding was rejected by learned trial Court, which was never challenged by the Petitioner. The principle of *res judicata* is applicable to the different stages of the proceedings and suits. Since the said order is not challenged, this Court is of the opinion that subsequent petition under Annexure-6 is not maintainable. Further, this Court makes it clear that the Petitioner has not made out any case as to why the proceedings of C.S. No. 269 of 2008 shall be stayed till disposal of arbitration proceeding, when the said suit has been deleted to be heard analogous to the other two suits and is referred to the arbitration for adjudication.

6. In view of the above, I find no infirmity in the impugned order. Accordingly, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks