

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No. 517 OF 2022

Debendra Parida & another

Petitioners

Mr. Goutam Mishra, Senior Advocate
along with Dinesh Kumar Patra, Advocate

-versus-

***Odisha Industrial Infrastructure
Development Corporation & another***

.... Opp. Parties

Mr. Dilip Kumar Mishra,
Learned Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

10.06.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 19th May, 2022 (Annexure-9) passed in F.A.O. No. 6 of 2022, whereby the learned Additional District Judge, Kujang while entertaining an interim application stayed operation of the order dated 1st December, 2021 passed by learned Senior Civil Judge, Kujang in I.A. No. 195 of 2021 (arising out of C.S. No. 89 of 2021).
3. Mr. Mishra, learned Senior Advocate appearing for the petitioners submits that the Petitioners as Plaintiffs have filed C.S. No. 89 of 2021 for declaration of right, title and interest along with ancillary relief, which is pending before learned Senior Civil Judge, Kujang. Along with the plaint, the Petitioners had also filed I.A. No. 195 of 2021 under Order XXXIX Rules 1 & 2 C.P.C. The Opposite Party 1 was not a party to the said suit. Considering the submissions made by learned counsel for the parties to the interim application, learned Senior Civil Judge vide his order dated 1st December, 2021 directed the parties to maintain

status quo in respect of the suit land till final disposal of the suit. Assailing the same, the Opposite Party No. 1 preferred F.A.O. No. 6 of 2022 under Order XLIII Rule 1(r) C.P.C. Along with the appeal memo, an interim application was also filed. While entertaining the interim application, learned Additional District Judge, Kujang effectively allowed the appeal. It is his submission that the Opposite Party 1 had not filed any leave to appeal to entertain F.A.O. 6 of 2022. However, learned Additional District Judge, Kujang without considering the same entertained the interim application and passed the impugned order. In view of the impugned order, nothing remains to be decided in F.A.O. No. 6 of 2022. Hence, he prays for setting aside the impugned order under Annexure-9 and to adjudicate the F.A.O. on merit giving opportunity to hearing the parties concerned without being influenced by the observation made in the impugned order.

4. Taking into consideration the submission made by Mr. Mishra, learned Senior Advocate and on perusal of the record, it appears that while adjudicating the interim application in F.A.O. No. 6 of 2022, learned Additional District Judge, Kujang made certain observations, which may prejudice the case of the Petitioners at the time of adjudication of F.A.O. No. 6 of 2022.

5. Mr. Mishra, learned Additional Government Advocate submits that since the appeal is posted to 8th July, 2022 and the respondents to the appeal have already entered appearance, interest of justice will be best served, if the appeal is finally disposed of.

6. In view of the above and the fact that the respondents to the F.A.O. No. 6 of 2022 have already entered appearance,

interest of justice will be best served if a direction is made for early disposal of F.A.O. No. 6 of 2022.

7. Accordingly, the CMP is disposed of with a direction to the learned Additional District Judge, Kujang to make an endeavour for early disposal of F.A.O. No. 6 of 2022 in accordance with law preferably by end of July, 2022 on its own merit (including maintainability), giving opportunity hearing to the parties concerned. It is made clear that while adjudicating F.A.O. No. 6 of 2022, learned Additional District Judge, Kujang shall not be influenced by the observations made in the impugned order under Annexure-9.

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

(K.R. Mohapatra)
Vacation Judge

bks/sb

