

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.750 of 2019

Khageswar Mohanty

....

Petitioner(s)

Mr. B. Das,
Advocate

-versus-

Harihar Mohanty & Ors.

....

Opposite Parties

Mr. K.K. Gaya,
Advocate for O.P.1

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
23.03.2022**

Order No.

07.

1. This C.M.P. involves a challenge to the order at Annexure-7 passed by the learned Civil Judge (Sr. Divn.), Kendrapara thereby rejecting the application for leave in bringing document indicated therein to the fold of evidence.

2. Referring to the documents at Annexure-4 Mr. Das, learned counsel for Petitioner reading the same together with the written statement pleadings involving the Defendant No.1 vis-à-vis the list of document at Annexure-5 attempted to establish that though it may not be a case that all the documents involving Annexure-5 have pleadings but number of documents indicated therein have already been involved in written statement pleadings. Taking this Court to majority of the documents and the pleadings through paragraph Nos.24, 26, 27 & 29 Mr. Das, learned counsel for Petitioner contended that since there is specific pleading involving many of the

documents and the proceeding is still in argument stage, unless the documents come into the fold of the proceeding, there shall be great prejudice to the defendants. It is also submitted that unless the documents are brought on record, there may not be effective adjudication of the suit and the same will ultimately be leading to unnecessary litigation. Mr. Das, learned counsel for the Petitioner contended that once the suit involves a *lis* and plaint pleadings are objected by way of pleadings in reference to the documents claimed herein, in the event there is no consideration of the documents in original to be presented along with written statement, despite there is provision provided to bring such documents at a later stage but with leave of Court, there is definite suffering to the defendants. It is thus contended that while considering the application at Annexure-4 the trial court failed to appreciate above aspect, the importance of the documents involved and for the failure of accepting such documents there cannot be effective adjudication of the suit. Keeping this in view a request is also made by Mr. Das, learned counsel for the Petitioner to this Court for interfering in the impugned order and setting aside the same. Mr. Das, learned counsel for the Petitioner also submitted that looking to the stage of the matter in bringing Annexure-4, there is already chief and cross examination of the plaintiff's witness and therefore, there is definite prejudice to the plaintiff in the event of allowing such documents at the instance of the defendants at this stage of the matter and claimed that such prejudice can be mitigated by way of compensation. Mr. Das, learned counsel for Petitioner thus contended that ultimately the requirement of law is to ensure effective adjudication of the civil dispute.

3. In his opposition learned counsel for the Opposite Party No.1 on reiteration of the objection of the plaintiffs by way of response vide Annexure-6 contended that for there is a lot of progress in the evidence already reaching closure stage from the side of the plaintiff, if the documents sought for by way of Annexures-4 & 5 are allowed to be brought to the fold of evidence at this stage, the Plaintiff will be prevented from having his chief as well as cross examination prospect involving such documents. Learned counsel for the Opposite Party No.1, however, has no objection to the settled proposition of law ultimately settling that it is for the Court to ensure effective adjudication of the lease involving the suit and there should not be any occasion and / or issue left to be decided in appeal stage.

In the above circumstance, learned counsel for the Opposite Party No.1 herein objected the move of the Petitioner by filing the C.M.P. and attempted to justify the impugned order of the trial court.

4. Considering the rival contentions of the parties, this Court finds, after the amendment in the C.P.C. in the year 2002 a party is required to have his pleading by filing together with a memo of documents if already relied along with documents, which principles is applicable equally to both the plaintiff as well as the defendant. Be that as it may, there is also provision providing opportunity to the parties to bring such documents so relied in their pleadings, but however taking leave of the Court concerned. It is, keeping this legal position in view, now this Court proceeds to find-out, if the documents attempted to be brought by way of Annexures-4 & 5 have any relevancy for effective adjudication of the suit. In the process of analyzing such aspect in the involvement of the counsel for the Petitioner and the Opposite Parties, this Court finds, there has been pleading involving majority of the documents. Even though all

the documents do not involve the pleadings of the Defendant No.1, this Court, therefore, observes, once there is pleading involving the disclosures of documents and documents could not be filed at the time of raising of pleadings in the event of an attempt to bring such document for effective adjudication of the dispute is made in obtaining the leave of the Court concerned, the same should be considered and failure of which there may not be effective adjudication dispute. The Courts while considering such aspect, should look to the injury to be suffered to the adversary with possibility of prolonging the litigation as well. However, since the relevancy aspect has to be considered in the trial of the suit, this Court finds, if there is prima facie satisfaction for bringing out such documents with available pleading. This Court thus finds, there is mechanical rejection of application and its part vide Annexures-4 & 5. This Court, therefore, in the above background of the matter, while interfering in the order at Annexure-7, sets aside the same and allowing the application at Annexure-4, taking into account the suffering of the Plaintiff on account of delayed attempt by the Defendants, this Court awards a cost of Rs.2,500/- (Rupees two thousand five hundred) to be paid to the Plaintiff in the Court below within ten days hence. On payment of cost proved through filing of receipt and production of certified copy of this order, the trial court on acceptance of documents pleaded through pleadings vide Sl. Nos.2, Sl. No.5 only parcha of Sabik Plot No.5263, Sl. No.6, Sl.No.7, Sl.No.8, Sl.No.9, Sl.No.13 only RSD dtd.2.11.1982 for its support through para 21, 22, 24, 26, 27 and 29 of written statement of the Annexure-5, shall recommence the evidence from plaintiff side with further opportunity of chief and cross examination of witness already examined vis-à-vis the above documents and

proceed accordingly. Suit pending since 2017 is directed to be disposed of within six months.

5. The C.M.P succeeds, but with costs.

(Biswanath Rath)
Judge

Ayaskanta Jena

