

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP No. 556 of 2022**

***Purusottam Nayak and another* ..... *Petitioners***

Mr. Maheswar Mohanty, Advocate

*-versus-*

***Basanti Nayak and another* .... *Opp. Parties***

Mr. Prafulla Kumar Rath, Advocate

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**12.08.2022**

**Order No.**

4. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 21<sup>st</sup> April, 2022 (Annexure-9) passed by learned District Judge, Bhadrak in FAO No.82 of 2021 confirming the order dated 21<sup>st</sup> October, 2021 (Annexure-7) passed by learned Civil Judge (Senior Division), Bhadrak in CMA No.355 of 2021 and IA No.233 of 2021 (arising out of CS No.333 of 2021-I), rejecting an application under Order XXXIX Rule 4 CPC.
3. In course of hearing, Mr. Mohnaty, learned counsel for the Petitioners submits that since the Petitioners have not filed any appeal against order passed in IA No.233 of 2021 (arising out of CS No.333 of 2021-I) no fruitful purpose would be served by pursuing the CMP. The appropriate remedy available for the Petitioners is by way of filing appeal under Order XLIII Rule 1(r) CPC to assail the order of *status quo*. In view of the above, he prays for withdrawal of the CMP to enable the Petitioners to file the appeal.

4. In that view of the matter, this Court, without expressing any opinion on the merit of the submission made by learned counsel for the Petitioners, disposes of the CMP as withdrawn.

5. Certified copies of Annexures-7 and 9 shall be returned to learned counsel for the Petitioners on being substituted with attested photocopies thereof.

***(K.R. Mohapatra)***  
***Judge***



*s.s.satapathy*