

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 558 of 2022

Korikani Bhimaya

..... Petitioner

Mr.Rama Chandra Pattnaik, Advocate

-versus-

Bapa Durga Pratap Reddy

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

06.09.2022

Order No.

6. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 6th August, 2021 (Annexure-5) passed by learned Civil Judge (Senior Division), Berhampur in CMA No.6 of 2021, whereby he rejected an application to restore the CS No.237 of 2009 to file.
3. Mr. Pattnaik, learned counsel for the Petitioner submits that the suit was posted to 8th April, 2021 for taking steps for issuance of notice against the Defendants. On that date, learned Advocate for the Plaintiff/petitioner filed an application stating that the Plaintiff wants to withdraw the suit. Accordingly, the matter was posted before National Lok Adalat for orders. The record was taken up in National Lok Adalat on 10th April, 2021 and considering the memo filed by learned Advocate for the Plaintiff, the suit was allowed to be withdrawn.
- 3.1 It is his submission that the Plaintiff had some differences with his previous Advocate for which the Plaintiff obtaining his consent engaged another counsel to pursue the matter on his

behalf. In support of his submission, he refers to Memo dated 2nd August, 2021 (Annexure-3) filed by the subsequent counsel engaged by the Plaintiff. It is his submission that the Plaintiff/petitioner had never given consent to his previous counsel for withdrawal of the suit. While obtaining consent, previous counsel appearing for the Plaintiff/Petitioner obtained the LTI of the Petitioner on a plain paper and utilizing the same, the memo for withdrawal was filed along with a petition to advance the date of hearing. When the Petitioner came to know about the order passed on 10th April, 2021 before National Lok Adalat, he immediately filed an application to restore CS No.237 of 2019, which was registered as CMA No.6 of 2021. Learned trial Court disbelieving the case of the Plaintiff/petitioner and misconstruing the law, rejected the said application vide order dated 6th August, 2021 (Annexure-5). Being aggrieved by the said order, this CMP has been filed.

4. In order to test the veracity of submission of learned counsel for the Petitioner, this Court, vide order dated 26th July, 2022 called for photocopy of the LCR in CS No.237 of 2019, which is tagged to the case record.

5. Upon hearing learned counsel for the Petitioner and on perusal of the case record, including photocopy of LCR in CS No.237 of 2019, it appears that the suit was posted to different dates to take steps for issuance of notice to the Defendants. The plaintiff did not take any step for issuance of notice to the Defendants till 8th April, 2021. On the said date, i.e., on 8th April, 2021, learned counsel for the Plaintiff filed a memo stating that the Plaintiff wants to withdraw the suit. Learned counsel for the

Plaintiff/Petitioner also does not dispute the LTI of the Plaintiff available on the said memo. It is his submission that while taking no objection from the previous counsel, the Plaintiff had put his LTI on the blank paper as instructed by his previous counsel and by mis-utilizing the said plain paper, Memo dated 8th April, 2021 has been filed. Annexure-3 to the CMP is the memo filed by the subsequent counsel in support of his appearance on behalf of the Plaintiff along with Vakalatnama provided by the previous counsel endorsing his '*no objection*'. In the said Vakalatnama, there appears no date. However, the memo filed by the subsequent counsel engaged by the Plaintiff was signed on 2nd August, 2021. Thus, from the record, it appears that the subsequent counsel entered appearance in the case on 2nd August, 2021. There is nothing on record to show that the previous counsel engaged by the Plaintiff/Petitioner has given his no objection prior to the date when the memo for withdrawal of the suit was filed. In that view of the matter, learned trial Court recorded his finding that there is nothing on record to disbelieve that the memo filed for withdrawal of the suit was not *bona fide*.

6. Learned counsel for the Petitioner relying upon a decision of Dharwad Bench of Karnataka High Court in the case of ***Smt. Renuka Vs. Sri Ramanand and another*** [W.P.No.103766 of 2018 disposed of on 31st March, 2022] submits that in case of compromise in Lok Adalat, parties to the compromise are required to be present before the Lok Adalat. He also relied upon a decision of Punjab-Haryana High Court in the case of ***Kuldeep Singh Vs. Virender Singh and another*** (C.R.

No.6164 of 2009 disposed of on 27th January, 2015, wherein it is held that by exercising power under Section 151 CPC, a Court can restore a suit to its file, which has been withdrawn. There is no dispute to the law laid down by Karnataka High Court as well as Punjab-Haryana High Court as stated above.

6.1 However, the instant case is not a case of compromise. Further, the Plaintiff/Petitioner could not substantiate his case by producing materials to show that the memo for withdrawal of the suit was filed without his consent and by mis-utilizing his LTI given on a plain paper. Learned trial Court on discussion of materials on record passed the impugned order.

7. In view of the discussions made above, I find no infirmity in the order dated 6th August, 2021 (Annexure-5) passed by learned Civil Judge (Senior Division), Berhampur in CMA No.6 of 2021, which is impugned herein this CMP.

8. Accordingly, the CMP being devoid of any merit stands dismissed.

9. Certified copy of documents/annexures may be returned to learned counsel for the Petitioner on being substituted with attested photocopy thereof.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy