

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 568 of 2022

Safoora Begum

..... Petitioner

Mr. S.S.Rao, Advocate

-versus-

Rashida Bibi

.... Opp. Party

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
29.06.2022**

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 10th May, 2022 (Annexure-4) passed by learned Civil Judge (Senior Division), Salipur in CMA No.124 of 2019 arising out of Execution Case No.5 of 2018, whereby learned executing Court rejected the petition filed under section 47 CPC holding it to be not maintainable.
3. Mr. Rao, learned counsel for the Petitioner made elaborate submission on merit of the petition under Section 47 CPC and submits that while considering the issue of maintainability of the petition under Section 47 CPC, learned executing Court passed the impugned order without providing an opportunity of hearing to the Petitioner (JDr.). The issue with regard to maintainability of petition under Section 47 CPC was heard on 23rd April, 2022. But, learned counsel for the Petitioner-JDr. was not present. As such, the issue of maintainability of petition filed under Section 47 CPC (CMA No.124 of 2019) was heard in her absence. In that view of the matter, Mr. Rao, learned counsel for the Petitioner submits that

the impugned order dated 10th May, 2022 under Annexure-4 suffers from violation of principles of natural justice in addition to flagrant miscarriage of justice. He, therefore, submits that the Petitioner-JDr should be given an opportunity of hearing on the issue of maintainability of CMA No.124 of 2019.

4. Taking into consideration the prayer made by learned counsel for the Petitioner, this Court disposes of the CMP with a direction that in the event Petitioner files a petition for recall of the impugned order and to provide her (JDr) an opportunity of hearing on the issue of maintainability, learned executing Court shall do well to consider the same in accordance with law within a period of two weeks from the date of filing of such application along with certified copy of this order giving opportunity of hearing to the parties concerned including the Petitioner.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy