

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.595 OF 2022

Sri Napolieon @ Nepu Behera

Petitioner

Mr. Abhishek Dash, Advocate

-versus-

Sri Dillip Behera and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

06.07.2022

Order No.

- 01.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP prays for a direction to set aside the order dated 20th April, 2022 (Annexure-3) and also the order dated 25th June, 2022 (Annexure-5), whereby learned Civil Judge (Senior Division), Baripada refused to recall the order under Annexure-3.
 3. Mr. Dash, learned counsel for the Petitioner submits that the matter was posted to 20th April, 2022 for adducing evidence on behalf of Defendant No.1-Petitioner. But due to some personal difficulties, he could not produce the witnesses on his behalf for examination for which he filed a petition for adjournment. On earlier occasion, the Defendant No.1-Petitioner had also prayed for an adjournment to produce the witnesses to adduce evidence on his behalf. Accordingly, time was allowed subject to payment of cost of Rs.300/-. But the cost could not be paid due to unavoidable circumstances. In that view of the matter, learned trial Court without considering the difficulties of Defendant No.1-Petitioner rejected the petition for time and closed his evidence. On the

very same day, he filed an application for recall of the order under Annexure-3 and to fix a date for adducing evidence on behalf of Defendant No.1-Petitioner, but the same was rejected vide order dated 25th June, 2022 under Annexure-5. Hence, this CMP has been filed.

4. Mr. Dash, learned counsel for the Petitioner submits that Defendant No.1-Petitioner is ready and willing to produce the witnesses to adduce evidence on his behalf, if a suitable date is fixed for the ends of justice. Due to certain difficulties, the Defendant No.1-Petitioner could not produce the witnesses. Unless an opportunity is given to the Defendant No.1-Petitioner to adduce evidence on his behalf, he would suffer irreparable loss as he will be precluded from propounding his own case before learned trial Court. Hence, he prays for setting aside the orders under Annexures-3 and 5 and to permit the Defendant No.1-Petitioner to produce the witnesses for adducing evidence on his behalf.

5. On perusal of the record, it appears that on 15th November, 2020 evidence from the side of the Plaintiff was closed. Since then, the suit is lingering for adducing evidence on behalf of the Defendant No.1-Petitioner. On 20th April, 2022, learned counsel for the Defendant No.1-Petitioner while seeking for adjournment made an assurance to the learned trial Court to produce the witnesses on the next date. The suit was accordingly adjourned to 28th April, 2022 for leading evidence on behalf of Defendant No.1-Petitioner subject to payment of cost of Rs.300/-. However, on that date, he remained absent. Looking at the conduct of the Defendant No.1-Petitioner,

learned trial Court had no other option than to reject the time petition and closed the evidence. The petition for recall of the order under Annexure-3 was also rejected on the same day.

6. Taking into consideration the submission of learned counsel for the Petitioner to the effect that the Defendant No.1-Petitioner will not commit such type of default in future and participate in the proceedings of the suit diligently, this Court disposes of this CMP with a direction that in the event the Petitioner deposits a sum of Rs.5000/- (Rupees five thousand only) as cost before the trial Court and files an application to recall of the order dated 20th April, 2022 under Annexure-3, within a period of two weeks hence, learned trial Court shall do well to reconsider his prayer in accordance with law giving opportunity of hearing to the parties concerned. In case learned Additional Senior Civil Judge, Baripada allows the petition, the cost so deposited shall be paid to the Plaintiff and if he decides to reject the said petition, the cost so deposited shall be refunded to the Defendant No.1-Petitioner.

7. Till a decision is taken on the petition, if filed within the stipulated period, as aforesaid, along with the cost, as directed, the order dated 25th June, 2022 under Annexure-5 shall be kept in abeyance.

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

(K.R. Mohapatra)
Judge