

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 613 of 2022

Rama Chandra Nayak ***Petitioner***
None

-versus-

Maheswar Samal ***Opp. Party***
Mr. Chandi Prasad Sahani, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

06.03.2023

Order No.

IA No.1075 of 2022

3. 1. This matter is taken up through Hybrid mode.
2. This application has been filed by the Opposite Party-
Maheswar Samal for modification of order dated 7th September,
2022 by which the CMP was disposed of.
3. It is submitted by Mr. Sahani, learned counsel for the
Opposite Party that the Petitioner had moved this Court in CMP
No.613 of 2022 assailing the orders dated 3rd January, 2018
(Annexure-1) and 3rd December, 2021 (Annexure-2) passed by
learned District Judge, Jajpur in RFA No.50 of 2015 and Misc.
Case No.01 of 2018 respectively.
- 3.1 It is his submission that due to non-appearance of the
Petitioner, the appeal filed by him was dismissed for non-
prosecution on 3rd January, 2018. Subsequently he filed an
application in Misc. Case No.1 of 2018 under Order XLI Rule
19 CPC for readmission of the appeal, which was also dismissed
on merit. Assailing the same, the aforesaid CMP was filed.
4. It is his submission that this Court, without issuing
notice to the Opposite Party, allowed the CMP taking note of

the statement made by the Opposite Party in his cross-examination to the effect that he has no objection for readmission of the appeal. Learned counsel for the Petitioner had submitted that the Opposite Party has never stated in his cross-examination that he has no objection for readmission of the appeal. The Opposite Party had only stated in his cross-examination that he has no objection, if the appeal is heard on merit. The Petitioner is taking adjournments repeatedly for which the Opposite Party is seriously prejudiced. Hence, the order passed in the CMP should be recalled and the matter may be heard on merit.

5. Considering the submission made by learned counsel for the Petitioner and on perusal of record, it appears that the Opposite Party during adjudication of Misc. Case No.1 of 2018, has categorically stated in his cross-examination that he has no objection if the appeal is heard on merit. In view of such statement, this Court had allowed the CMP vide order dated 7th September, 2022. However, liberty was granted to the Petitioner to seek for variation of the order, if he feels aggrieved.

5.1 Taking note of submission of learned counsel for the Opposite Party, it is apparent that the Opposite Party had stated in his cross-examination that he has no objection if the appeal is heard on merit. Thus, he should not raise any objection the order dated 7th September, 2022, whereby a direction was made by this Court to hear the appeal on merit. As such, I am not inclined to entertain this IA filed by the Opposite Party.

6. However, keeping in view the appeal is of the year 2015, this Court directs that learned appellate Court shall make an endeavour for early disposal of the appeal giving opportunity

of hearing to the parties concerned. No liberal/long adjournment(s) shall be granted to any of the parties. Parties are directed to cooperate with learned appellate Court for early disposal of the Appeal.

7. The IA is disposed of accordingly.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy

