

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 717 OF 2022

Bajaj Finance Ltd., Bhubaneswar ***Petitioner***
Mr. Ramachandra Panigrahy, Advocate

-versus-

Manju Jajodia and others ***Opp. Parties***
Mr. Bibekananda Bhuyan, Advocate
(For Opp. Party No.1)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

24.08.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. Order dated 22nd July, 2022 (Annexure-1) passed by learned 3rd Additional Sessions Judge, Cuttack in R.F.A. No.439 of 2022 is under challenge in this CMP, whereby he allowed an application filed by the Appellant-Opposite Party No.1 and directed the Financer-Petitioner (Respondent No.1 before the appellate Court) to produce the original Registered Sale Deed dated 14th August, 2006 before the said Court for perusal and for proper adjudication of R.F.A. No.439 of 2022.
 3. Mr. Panigrahy, learned counsel for the Petitioner submits that on a petition filed under Order VII Rule 11 C.P.C., the Plaint in C.S. No.226 of 2022 has been rejected against which R.F.A. No. 439 of 2022 has been filed by the Appellant-Opposite Party No.1. During pendency of the appeal, the Opposite Party No.1 filed an application (Annexure-3) with a prayer to call for the records in Bank Misc. Case No.6 of 2022 pending in the Court of learned Chief Judicial Magistrate, Cuttack filed by the present Petitioner for proper adjudication of

the case. The said application did not disclose the provision under which it was filed. Further, no such application was filed before learned trial Court. He further submits that although an objection raised to the effect that learned appellate Court cannot accept the additional evidence without satisfying the requirement of Order XLI Rule 27 C.P.C., none of the objections, as aforesaid was taken into consideration by learned appellate Court. On the other hand, learned appellate Court travelled beyond the scope of prayer made in the application under Annexure-3 and directed the present Petitioner to produce the original Registered Sale Deed dated 14th August, 2006 before it, which was never prayed for. It is his submission that learned appellate Court has neither any jurisdiction to entertain such an application nor the said application is maintainable in law. In that view of the matter, he prays for setting aside the impugned order under Annexure-1.

4. Mr. Bhuyan, learned counsel appearing for the Opposite Party No.1 submits that although no provision of law was mentioned in the petition under Annexure-3 to call for the records from the Court of learned Chief Judicial Magistrate, Cuttack, but it was essentially an application under Order XIII Rule 10 C.P.C.. Rule 10 (3) makes it amply clear that in such a situation, the records called for cannot be accepted as an evidence. Thus, the requirements of Order XLI Rule 27 C.P.C. are not required to be complied with. He further referring to Section 107 (2) C.P.C., submits that learned appellate Court has all power of a Court of original jurisdiction. Since the Appellant took a plea before learned appellate Court to the effect that by

calling for the record, the Opposite Party No.1 is trying to linger the proceeding before learned Chief Judicial Magistrate, Cuttack, filed under Section 14 of the SARFAESI Act, learned appellate Court directed the Petitioner to produce the original of the said document for verification, which is available in Bank Misc. Case No.6 of 2022. In that view of the matter, he prays for dismissal of the CMP.

5. In course of hearing, Mr. Panigrahy, learned counsel for the Petitioner submits that he has no objection, if the Petitioner is permitted to produce the certified copy of the Registered Sale Deed dated 14th August, 2006 by obtaining it from the Court of learned Chief Judicial Magistrate, Cuttack.

6. Mr. Bhuyan, learned counsel for the Opposite Party No.1 does not have any objection to such submission.

7. In that view of the matter, this Court without delving into the merit of rival contentions raised by learned counsel for the parties, directs that the Petitioner-Financer shall produce the certified photocopy of the Registered Sale Deed dated 14th August, 2006 by obtaining it from the Court of learned Chief Judicial Magistrate, Cuttack within a period of fifteen days hence, which shall be considered by learned appellate Court in accordance with law.

8. The CMP is accordingly disposed of.

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

(K.R. Mohapatra)
Judge