

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.727 of 2022

Ashis Mohanty

..... Petitioner

Mr. Gopinath Mishra, Advocate

-versus-

Niranjan Sahoo

.... Opp. Party

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

**ORDER
09.09.2022**

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 29th June, 2022 (Annexure-2) passed by learned Civil Judge (Junior Division), Bhubaneswar in IA No.1 of 2022 (arising out of CS No.1104 of 2022), whereby an application under Order XXXIX Rule 3 has been rejected.
3. Mr. Mishra, learned counsel for the Petitioner submits that in the meantime notice on Defendant/Opposite Party has already been served, but he is avoiding to appear before learned trial Court and on the plea that Defendant /Opposite Party has not entered appearance, learned trial Court is not taking up the IA No.1 of 2022. He further submits that due to urgency involved in the IA No.1 of 2022, the Petitioner had filed an application under Order XXXIX Rule 3 CPC to take up the IA dispensing with service of notice on Defendant/Opposite Party. The said petition was rejected vide order dated 29th June, 2022 without assigning any valid reason thereto. However, since notice on the Defendant / Opposite Party has already been made

sufficient in the meantime, learned trial Court ought to have taken up IA No.1 of 2022 at the earliest.

3.1 In view of the above, he submits that interest of justice will be best served if the IA No.1 of 2022 is taken up on merit at an early date.

4. Taking into consideration the submission of learned counsel for the Petitioner, this Court is of the considered opinion that since IA No.1 of 2022 has been filed under Order XXXIX Rules 1 and 2 CPC, learned trial Court should make an endeavour to take up the matter on merit at an early date. It is, however, submitted that notice on Defendant/Opposite Party has already been served. If that be so, learned trial Court can take up IA No.1 of 2022 without waiting for appearance of Defendant/Opposite Party.

5. In view of the discussions made above, the CMP is disposed of with a direction that learned trial Court shall make an endeavour to take up IA No.1 of 2022, as expeditiously as possible, preferably within a period of fifteen days from the date of production of certified copy of this order, if it is established that notice of Defendant/Opposite Party is made sufficient.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge