

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.735 of 2022

M/s Shriya Logistics

.....

Petitioner

Mr. Prasanta Kumar Khuntia, Advocate

-versus-

***Aamogh Mining and Trading Private
Ltd. and another***

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.08.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP pray seeks to assail the order dated 6th April, 2022 (Annexure-1) passed by learned Senior Civil Judge (Commercial Court), Cuttack CS (III) No.383 of 2017 whereby entertaining an application under Order IX Rule 7 CPC, learned trial Court recalled the order setting the Defendant *ex parte*.
3. Mr. Khuntia, learned counsel for the Plaintiff/Petitioner submits that notice on Defendant-Opposite Party No.1 was made sufficient. Due to its non-appearance of the Defendant-Opposite Party No.1 on 18th February, 2022, it was set *ex parte*. The matter was then posted to 7th March, 2022. Relying upon the tracking report, learned trial Court held that delivery of notice on Defendant No.1 to be sufficient and said Defendant was also set *ex parte*. Thereafter, an application under Order IX Rule 7 CPC was filed by the Defendants to set aside the *ex parte* order, which was allowed on 6th April, 2022 (Annexure-1). It is his submission that when the summons was made

sufficient and Defendants failed to appear on the date fixed, learned trial Court had rightly set them *ex parte*. Without showing good cause for their non-appearance, the impugned order could not have been passed. The only cause shown by the Defendants was that due to mistake of the Clerk, the appearance could not be filed on the dates fixed. The same is not sustainable in the eye of law. Hence, he prays for setting aside the impugned order under Annexure-1.

4. Taking into consideration the submission made by learned counsel for the Plaintiff/Petitioner and the observation of the learned trial Court to the effect that the Defendants want to contest the suit on merit, this Court is of the considered opinion that learned trial Court has not committed any error in setting aside the *ex parte* order. Law is well-settled that the Court should make an endeavour to dispose of the matter on merit. When the Defendants/Opposite Parties want to contest the suit and have filed a petition for setting aside the *ex parte* order without making any unreasonable delay, learned trial Court has not committed any error by allowing the same.

5. Accordingly, the CMP stands dismissed being devoid of any merit.

(K.R. Mohapatra)
Judge