

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 743 OF 2022

Nimai Charan Dutta ***Petitioner***
Mr. Manoj Kumar Pati, Advocate

-versus-

The Collector, Balasore and others ***Opp. Parties***
Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
12.08.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 28th July, 2022 (Annexure-4) passed by learned Civil Judge (Junior Division), Jaleswar in I.A.No.64 of 2022 (arising out of C.S. No.540 of 2022), whereby he rejected an application under Order XXXIX Rule 3 C.P.C. filed along with aforesaid interim application.
3. Mr. Jena, learned counsel for the Petitioner submits that along with the plaint in C.S. No. 540 of 2022, the Plaintiff-Petitioner filed I.A. No.64 of 2022 under Order XXXIX Rules 1 and 2 C.P.C. As there was urgency in the matter, the Plaintiff also filed an application under Order XXXIX Rule 3 C.P.C. to pass an ad interim order of injunction by dispensing with service of notice on the Defendants, who are functionaries of State. Learned trial Court without considering the urgency in the matter, rejected the application under XXXIX Rule 3 C.P.C. vide order dated 28th July, 2022 (Annexure-4). Hence,

finding no order alternative, the Petitioner has moved this Court in the CMP.

4. Mr. Mishra, learned Additional Standing Counsel for the Opposite Parties submits that copy of the CMP has not yet been served on the State. Since the functionaries of the State are the Defendants in the suit, the Petitioner can move the application under Order XXXIX Rules 1 and 2 C.P.C. by serving notice on the Defendants therein through alternate mode.

5. Taking into consideration the submission made by learned counsel for the parties, this Court finds that the Defendants in the suit are the functionaries of the State and they are being represented by learned Government Pleader/Additional Government Pleader attached to the said Court.

6. In view of the above, this Court, without interfering with the order impugned herein, disposes of the CMP with an observation that in the event, the Petitioner serves a copy of the interim application along with the plaint on learned Government Pleader/Additional Government Pleader attached to the Court of learned Civil Judge (Junior Division), Jaleswar to defend the case of the Defendants therein, the same shall be accepted. On service of the copy of the interim application along with plaint, the Defendants will file their objection to the IA within a period of fifteen days therefrom and in that event, learned trial Court shall do well to consider the I.A.

No.64 of 2022 as expeditiously as possible preferably within a period of fifteen days therefrom.

7. It is made clear that this Court has not expressed any opinion on the merits of the case of the Petitioner before learned trial Court.

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

(K.R. Mohapatra)
Judge



s.s.satapathy