

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 757 OF 2022

Baba Bisheswara Mahadev Bije ***Petitioner***
Maharudrapur

Mr. Vivekananda Jena, Advocate

-versus-

Sri Kamalakanta Panda and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
24.08.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Order dated 20th July, 2022 (Annexure-6) passed by learned 1st Additional Senior Civil Judge, Balasore in Civil Suit No.847 of 2013-I is under challenge in this CMP, whereby an application filed by the Defendant No.3 (Opposite Party No.1 herein) under Order VIII Rule 9 read with Order IX Rule 7 C.P.C. was allowed accepting the written statement filed by him.
3. Mr. Jena, learned counsel for the Petitioner submits that Defendants Nos.1 and 3 entered appearance on 13th November, 2013 but subsequently they did not file their written statement and accordingly, they were set *ex parte* vide order dated 13th February, 2014. Subsequently, the Defendant Nos.1 and 2 filed separate petitions to set aside the *ex parte* order and to accept their written statement, which were allowed. But the Defendant No.3 did not file any petition either to set aside the *ex parte* order or to file written statement. In the meantime, the evidence

of the Plaintiff has been closed and the Defendants have already examined two witnesses. Thereafter, the Defendant No.3 filed the aforesaid application, which was allowed without assigning any good reason. It is his submission that the Defendant No.3 was served with summon and he entered appearance on 13th November, 2013. He had knowledge of proceeding of the suit all throughout. However, he preferred not to file any written statement in time. Relying upon the decision in the case of **Arjun Singh –v- Mohindra Kumar and others**, reported in AIR 1964 SC 993, Mr. Jena, learned counsel for the Petitioner submits that by setting aside the *ex parte* order, the Defendants cannot be relegated to the position prior to the date of hearing of the suit. As such, the impugned order is against the aforesaid ratio decided by the Hon'ble Supreme Court and is not sustainable in the eyes of law. He, therefore, prays for setting aside the impugned order under Annexure-6.

4. Upon hearing learned counsel for the Petitioner, it appears that learned trial Court considering the application filed by Defendant No.3 under Order VIII Rule 9 read with Order IX Rule 7 C.P.C. allowed the same by accepting the written statement for the ends of justice and avoiding multiplicity of litigation.

5. It is, however, clear from the case record that the evidence from the side of the Plaintiff is closed and the Defendants have already examined two witnesses. The plea taken by the Defendant No.3 reveals that although the

Defendant Nos.1 to 3 appeared on the same day, but the Defendant Nos.1 and 2 filed their written statement without intimating the Defendant No.3, who was completely in dark about the proceeding of the suit. When he came to know about the developments in the suit from the co-villagers, he immediately filed the aforesaid application. This Court in the case of **Smt. Sarbati Devi Goinka –v- Durga Prasad Agrawal**, reported in 2009 (I) OLR 48 relying upon the decision of Hon'ble Supreme Court in the case of **M/s. R.N. Jadi Brothers and others –v- Subhashchandra**, reported in 2007 (II) OLR (SC) 498, had allowed the Defendants therein to file their written statement after hearing of the suit was commenced.

6. In view of the decision, as aforesaid, this Court is of the considered opinion that when learned trial Court has accepted the written statement of Defendant No.3 and allowed him to participate in the suit, it would not be proper to interfere with the impugned order under Annexure-6. It is, more so, because learned trial Court had made an endeavour to dispose of the suit on merit by allowing all the parties to contest the same.

7. In view of the above, I am not inclined to entertain the prayer made in the CMP. Accordingly, this CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge