

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 789 of 2022

Sabitri Agarwal

..... Petitioner

Mr. Tusar Kumar Mishra, Advocate

-versus-

Sunita Agarwal and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

24.09.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 22nd June, 2022 (Annexure-5) passed by learned First Additional District Judge, Rourkela in FAO No.28 of 2021, whereby the order dated 11th October, 2021 (Annexure-4) passed by learned Senior Civil Judge, Rourkela in IA No.8 of 2019 (arising out of CS No.12 of 2019) has been confirmed.
4. Mr. Mishra, learned counsel for the Petitioner submits that CS No.12 of 2019 has been filed with a prayer to declare that Defendant No.1 has no right to offer the suit property as an co-lateral security to avail the loan in the name of Defendant No.3 and consequential relief. Along with the plaint, the Plaintiff/Petitioner filed an application under Order XXXIX Rules 1 and 2 in IA No.8 of 2019, which was dismissed vide order dated 11th October, 2021 making certain observation with regard to merit of the suit. Although the Plaintiff/Petitioner filed FAO No.28 of 2021 assailing the said order under Annexure-4, learned appellate Court confirmed the same vide order under Annexure-5. Mr. Mishra, learned counsel submits

that Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') is a bar for grant of interim injunction in respect of which action under the said Act has been taken. He, however, submits that observation made by learned trial Court made in his order may influence the final judgment to be passed in the suit. In that view of the matter, he prays for a direction to dispose of the CMP by striking down the observation with regard to merit of the suit made learned trial Court in its order under Annexure-4.

5. Taking into consideration the submission made by learned counsel for the Petitioner, this Court, without interfering with the impugned orders under Annexures-4 and 5, disposes of the CMP with an observation that the findings arrived at by learned Courts while disposing of the IA as well as FAO shall not influence learned trial Court while adjudicating the suit on merit. Keeping in mind the nature of the suit, learned trial Court may also make an endeavour for early disposal of the same. Parties are directed to cooperate for early disposal of the suit.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge