

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 794 OF 2022

Shyam Sundar Mohanty ***Petitioner***
Mr. Brahmananda Tripathy, Advocate
-versus-
Kameni Dalei ***Opp. Party***
Mr. Maneswar Mohanty, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
02.09.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. Order dated 26th July, 2019 (Annexure-4) passed by learned 5th Additional District Judge, Bhubaneswar in R.F.A. No.29 of 2019 is under challenge in this CMP, whereby an application under Order VI Rule 17 C.P.C. filed by the present Petitioner has been rejected.
3. Mr. Tripathy, learned counsel for the Petitioner submits that during pendency of R.F.A. No.29 of 2019, the Appellant-Petitioner filed an application under Order VI Rule 17 C.P.C. for amendment of the written statement. Said application was taken up on 3rd February, 2020 on which date learned appellate Court passed the following order:

“In that view of the matter, the proposed amendment application as filed by the appellant shall be taken up for hearing, in course of hearing the appeal on merit. Put up on 13.02.20 for hearing the appeal on merit, in course of which, the appellant shall have liberty to raise the requirement of the amendment, as prayed for by him. Parties to get ready for hearing.”

Thus, the matter was taken up on 26th July, 2022. In spite of the aforesaid direction, learned appellate Court took up the

petition under Order VI Rule 17 C.P.C. before hearing of the appeal on merit and dismissed the same vide impugned order under Annexure-4. Hence, this CMP has been filed.

4. It is submitted by Mr. Tripathy, learned counsel for the Petitioner that the petition for amendment ought to have been considered by learned appellate Court at the time of hearing of the appeal on merit and the same should have been dealt with in the final judgment and decree in view of the direction of learned appellate Court vide order dated 3rd February, 2020. That having not been adhered to in the impugned order, the same is vitiated and is liable to be set aside.

5. Mr. Mohanty, learned counsel for the Respondent- Opposite Party submits that the suit was filed in the year 2005 and the written statement was filed in the year 2007. The Appellant filed an application for amendment of the written statement without satisfying the requirement of proviso to Order VI Rule 17 C.P.C. Not a single word is whispered in the petition under Order VI Rule 17 C.P.C. explaining that in spite of due diligence, the Petitioner could not have raised such plea sought to be incorporated by way of amendment. He further submits that in terms of the order dated 3rd February, 2020, learned appellate Court took up the petition under Order VI Rule 17 C.P.C. in course of hearing of the appeal on merit and passed the impugned order under Annexure-4, so that it can proceed further with the argument of the Appellant on merit. As such, learned appellate Court has committed no error, procedural or otherwise in passing the impugned order. Hence, he prays for dismissal of the CMP.

6. Upon hearing learned counsel for the parties and on perusal of the record, it is clear that vide order dated 3rd February, 2020, learned appellate Court directed to take up the petition under Order VI Rule 17 C.P.C. for hearing in course of hearing of the appeal on merit. Learned counsel for the parties submit that hearing of the appeal has already commenced. In course of hearing of the appeal, the petition under Order VI Rule 17 C.P.C. was taken up for consideration and the impugned order has been passed. Learned appellate Court while considering the petition under Order VI Rule 17 C.P.C. on assessment of the materials on record came to a categorical conclusion that the Appellant-Petitioner had knowledge about the proposed amendment during pendency of the suit. On verification of the petition for amendment annexed to the CMP as Annexure-1, it is crystal clear that the requirement of proviso to Order VI Rule 17 C.P.C. is not satisfied.

7. Since the petition under Order VI Rule 17 C.P.C. has been considered during course of hearing of the appeal and learned appellate Court has passed a reasoned order, I am not inclined to interfere with the same.

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

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

(K.R. Mohapatra)
Judge