

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 820 of 2022

Baikunthanath Pati

..... Petitioner

Mr. Gopinath Mishra, Advocate

-versus-

Sarbeswar Pati and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

08.09.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. This CMP has been filed assailing order dated 2nd December, 2021 (Annexure-1) passed by learned Senior Civil Judge, Pattamundai in IA No.260 of 2021 (arising out of CS No.256 of 2021 rejecting the prayer to continue the order of status quo. Further, prayer is also made to restore the order dated 18th August, 2021 by which allowing an application under Order XXXIX Rule 3 CPC, learned trial Court granted an ad-interim order of status quo.
3. Mr. Mishra, learned counsel for the Petitioner submits that in CS No.256 of 2021, an application in IA No.260 of 2021 has been filed under Order XXXIX Rules 1 and 2 CPC read with Section 151 CPC. As there was urgency, an application under Order XXXIX Rule 3 CPC was also filed to pass an ad-interim order of status quo dispensing with service of notice on Defendants/Opposite Parties. The said application was allowed

and the Court, vide order dated 18th August, 2021 directed as under:-

“So, in my considered view, to keep the property intact and safe, it is necessary to maintain status quo over the suit property till the appearance of the Opp. Parties. Issue notice to the Opp. Parties through special messenger if cost is paid fixing 09-09-2021 for appearance of the Opp. Parties. Petitioner to comply with proviso U.o.39, Rule-3 by 19-08-2021.”

On the next date, i.e., 9th September, 2021, Defendants/Opposite Party Nos.1, 5, 7, 9 and 11 entered appearance through Advocate and filed a petition for adjournment to file objection to the IA. Accordingly, the interim order was extended. The matter was next posted to 2nd December, 2021, on which date learned trial Court on a misconception that the petition for extension of order of status quo was rejected on 18th August, 2021 did not extend the interim order of status quo. However, the Petitioner remained under impression that the order of status quo is extended. Thereafter, on each date of posting, application for adjournment for filing objection by the Defendants/Opposite Parties was filed. The Petitioner went on filing petition for continuance of the order of status quo on an impression that the order of status quo is continuing. But subsequently, the Petitioner came to know that the order of status quo was not extended pursuant to interim order dated 2nd December, 2021. Hence, this CMP has been filed.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of record, it appears that under a misconception that the petition for extension of status quo order was rejected on 18th August, 2021, learned

Senior Civil Judge, Pattamundai did not extend the said order. It appears from the record that ad-interim order of status quo was granted on 18th August, 2021 and no petition for extension of the said order was filed on that date. It further appears that the Petitioner remained under a bona fide impression that the ad-interim order of status quo is being extended and went on filing petitions on the subsequent dates for continuance of the status quo order as the Defendants/Opposite Parties who have entered appearance were filing petitions for adjournment to file objection to the IA filed under Order XXXIX Rules 1 and 2 CPC. In view of the above, petition for extension of order of status quo filed by the Plaintiff/Petitioner should have been considered favourably.

5. This Court, accordingly disposes of the CMP with a direction that in the event the Petitioner files a fresh application for continuance of the order of status quo along with certified copy of this order within a period of seven days hence serving copy thereof on learned counsel for the Defendants/Opposite Parties along with the advance petition, learned trial Court shall do well to consider the same on the same day or on the next day giving opportunity of hearing to the parties concerned.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge