

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 844 OF 2022

Sarat Charan Jena *Petitioner*
Mr. Raju Kumar Satpathy, Advocate
-versus-
Khirod Chandra Behera and another *Opp. Parties*

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
26.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 6th August, 2022 (Annexure-5) passed by learned Civil Judge (Senior Division) (L.R.), Bhubaneswar in C.S. No.114 of 2013, whereby an application filed by the Petitioner to recall P.W.1 to produce certain documents has been rejected.
3. Mr. Satpathy, learned counsel for the Petitioner submits that the suit has been filed for declaration and for permanent injunction. In course of cross-examination of P.W.1, it came to light that the Plaintiff-Petitioner had not exhibited certain material documents, which are necessary for just adjudication of the suit. Hence, an application was filed on 25th July, 2022 to recall the P.W. 1 for further examination and exhibiting those documents. Learned trial Court rejected the said application holding that an application of similar nature was dismissed earlier. Hence, subsequent application is not maintainable.
4. It is his submission that dismissal of earlier application for recalling of P.W. 1 should not stand a bar to entertain the

present one as the documents are essential to establish the case of the Plaintiff-Petitioner in the suit. Hence, learned trial Court without resorting to hyper technicalities should have allowed the application by recalling P.W.1.

5. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the Plaintiff-Petitioner had earlier filed an application on 25th July, 2022 to recall P.W.1 for further examination and to produce certain documents, which was rejected. Said order remained unassailed. Hence, subsequent application of similar nature is not maintainable in law, as it is well settled that principle of *res judicata* also applies to different stages of the suit. Thus, I find no infirmity in the impugned order under Annexure-5.

6. 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

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