

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 871 of 2022

Dr. Ardhendu Sekhar Bhol ***Petitioner***
Mr. Sunil Kanta Nayak, Advocate
-versus-

Arpita Aparajita ***Opp. Party***
Mr. Prasanna Kumar Bhuyan, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
01.12.2022

6. 1. This matter is taken up through Hybrid mode.
2. Order dated 8th August, 202 (Annexure-6) passed by learned Civil Judge (Senior Division), Bhubaneswar in Execution Case No.14 of 2021 is under challenge in this CMP, whereby an application for amendment of the application under Section 47 CPC filed by the Petitioner has been rejected.
3. Mr. Nayak, learned counsel for the Petitioner submits that the Opposite Party as DHr. has filed Execution Case No.14 of 2021 to execute the decree passed in Complaint Case No.138 of 2018 being disposed of on compromise by Odisha Real Estate Regulatory Authority, Bhubaneswar vide order dated 16th January, 2019. The Petitioner on being summoned, appeared and filed an application under Section 47 CPC. It is his submission that in view of Rule 431 of GRCO (Civil) (Part-I), the petition under Section 47 CPC should have been registered as a separate Misc. Case. Language and tenor of Section 47 CPC clearly reveals that it should be tried like a suit. Thus, the

contents of Section 47 CPC is capable of being treated as pleading and can be amended showing sufficient cause. Learned Executing Court failed to appreciate the same and passed the impugned order under Annexure-6. Hence, prays for setting aside of the impugned order and prays for remitting the matter to the Executing Court to consider the petition for amendment afresh giving opportunity of hearing to the parties.

4. Mr. Bhuyan, learned counsel for the Opposite Party/DHr. submits that the pleading is defined under Order 6 Rule 1 CPC, which includes plaint and written statement. He also placed reliance on Appendix-A, CPC and submits that only averments made in plaint and written statement are pleadings. Contents of a petition cannot be treated as pleadings. As such, learned trial Court has committed no error in dismissing the application for amendment.

5. Considering the submissions made by learned counsel for the parties, this Court is of the considered opinion that a concise statement of material facts is called 'pleading' Further, a petition under Section 47 CPC can be adjudicated like a suit, since the executability of a decree is challenged. Section 47 CPC also makes it clear that objection with regard to executability of a decree cannot be adjudicated in a separate suit. Thus, the only forum for adjudication with regard to executability of a decree by the JDr. is by filing a petition under Section 47 CPC. Any averment or content of a petition which needs adjudication is subject to amendment upon showing sufficient cause for the same.

6. It further appears that learned trial Court has not registered the petition under 47 CPC as a separate petition (Miscellaneous Judicial Case) as provided under Rule 431 of GRCO (Civil) (Part-I). Thus, learned Executing Court is required to register the same as a separate Miscellaneous Case and proceed with the matter.

7. As discussed earlier, a statement of fact or averment, which requires adjudication, is subject to amendment. Thus, the impugned order under Annexure-6 is not sustainable. Accordingly, the same is set aside. The matter is remitted back to learned Executive Court to adjudicate the petition for amendment afresh on merit after registering the petition under Section 47 CPC as a separate Miscellaneous Judicial Case.

8. The CMP is disposed of with the observation and direction, as aforesaid.

9. Interim order dated 8th September, 2022 passed in IA No.911 of 2022 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge