

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 875 OF 2022

Pramod Kumar Sahu

....

Petitioner

Mr. Swarup Kumar Pattnaik, Advocate
on behalf of Mr. Debakant Mohanty, Advocate

-versus-

Pramila Malik 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. The Petitioner in this CMP seeks to assail the order dated 6th April, 2022 (Annexure-3) passed by learned Senior Civil Judge, Salipur in C.S. No. 6998 of 2021, whereby a petition under Order XVIII Rule 17 C.P.C. filed by Defendant-Petitioner to recall P.W. 2 has been rejected.
3. Mr. Pattnaik, learned counsel for the Petitioner submits that P.W.2, namely, Kailash Mallick, was examined on 2nd January, 2019. Thereafter, the Defendant-Petitioner cross-examined him partly and the case was deferred for further cross-examination to 15th January, 2019 on a petition filed by Defendant. Subsequently, on 25th August, 2021, although P.W.2 was available in Court, but the Defendant was found absent on repeated calls. Hence, the evidence of P.W.2 was closed. However, on the said date, learned counsel for the Defendant filed a petition for recall of P.W.2 for further cross-examination, which was allowed and P.W.2 was cross-examined on 4th September, 2021. Thereafter, the matter was posted to 26th October, 2021 for further cross-examination of the said witness on which date a

petition for adjournment was filed, which was rejected and evidence of P.W.2 was closed. However, the Defendant-Petitioner filed a petition (Annexure-2) under Order XVIII Rule 17 C.P.C. on 10th March, 2022 to recall the said witness for further cross-examination, which was rejected. Hence, this CMP has been filed.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the Defendant-Petitioner was given ample opportunities to cross-examine P.W.2. Further, it appears that the petition under Order XVIII Rule 17 C.P.C. does not spell out a single word disclosing the reason for which the Defendant wants to recall P.W.2. The averments made therein only disclose that on the date of cross-examination of P.W.2, learned counsel for the Defendant left the original documents in his residence for which he could not examine P.W.2. Said ground cannot be considered for recalling a witness, whose examination has been completed since 26th October, 2021. Had it been so, learned counsel for the Defendant filed an application immediately to recall the said witness. But, the petition under Annexure-2 was filed lately on 10th March, 2022, which reveals that the Defendant is adopting a dilatory tactics and the ground taken does not fall within the requirement of Order XVIII Rule 17 C.P.C.

5. 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