

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 880 of 2022

District Transport Employees Association, Kendrapara and another ***Petitioners***

Mr. Bibhudananda Muduli, Advocate

-versus-

Prasanna Kumar Nayak and another ***Opp. Parties***

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER

23.09.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 22nd August, 2022 (Annexure-6) passed by learned Senior Civil Judge (LR & LTV), Kendrapara in CS No.325 of 2022, whereby two petitions for setting aside the ex-parte order as well as to participate in hearing of the suit were rejected.
3. Mr. Muduli, learned counsel for the Petitioners submits that Petitioners are Defendant Nos. 4 and 5 in the suit. Before commencement of hearing, the Advocate for the Plaintiffs tried to serve copy of the evidence in affidavit on learned counsel appearing for Defendant Nos. 4 and 5 to which he refused. That was not within the knowledge of these Petitioners/Defendant Nos. 4 and 5. In view of the above, learned trial Court by setting the Defendant Nos.4 and 5 (present Petitioners) ex-parte vide order dated 4th May, 2022, proceeded with recording of the evidence on behalf of the Plaintiffs. When the Petitioner came

to know about the same they engaged the present set of counsel and filed the aforesaid two petitions on 4th July, 2022.

3.1 Mr. Muduli, learned counsel for the Petitioners further submits that although these Defendants had appeared in the suit since long, but they could not file the written statement. However, in the meantime, they have changed their counsel and made a prayer to participate in the hearing of the suit. Learned trial Court rejected both the petitions for which Defendant Nos.4 and 5/Petitioners are non-suited. It is his submission that even if Petitioners/Defendant Nos. 4 and 5 are set ex-parte they can be permitted to participate in the hearing of the suit and cross-examine witness of Plaintiffs without propounding their own case. It is further submitted that examination of PW-1 has only been completed and the suit is posted for examination of other witnesses on behalf of Plaintiff. Thus, learned trial Court has committed error of law in rejecting the petition for leave to participate in hearing of the suit.

4. Taking into consideration the submission made by learned counsel for the Petitioners, this Court is of the considered opinion that since the suit is of the year 2002 and that the Defendant Nos.4 and 5 have not filed the written statement for last twenty years together with the fact that hearing of the suit has already commenced, learned trial Court has not committed any error in rejecting the application for setting aside ex-parte order. Even a party is set ex-parte, it can be allowed to participate in hearing of the suit and cross-examine the witness without propounding its own case.

5. In view of the above, this CMP is disposed of with a direction that if the Petitioners file a fresh application to participate in hearing of the suit and to cross-examine the witnesses of the Plaintiffs without propounding their own case, the said application shall be considered in accordance with law giving opportunity of hearing to the parties concerned.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy