

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 892 OF 2022

Raghunath Pati

....

Petitioner

Mr. Dipak Dey, Advocate

-versus-

Dr. Labanya Chandra Sahoo

....

Opp. Party

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
29.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 28th January, 2022 (Annexure-3) passed by learned Civil Judge, (Junior Division) 1st Court, Cuttack in C.M.A. No.3 of 2020 (arising out of C.S. No.162 of 2015), whereby an application filed by the Petitioner-Defendant under Order XXVI Rule 10-A C.P.C. has been rejected.
3. Mr. Dey, learned counsel for the Petitioner submits that during cross-examination of P.W.2, the Defendant-Petitioner filed an application under Order XXVI Rule 10-A C.P.C. praying inter alia to send the copy of Bank draft dated 12th September, 1998, money receipt, lease deed dated 25th August, 2004 and written application of the Opposite Party to the OSHB dated 21st April, 2004 to the handwriting expert for examination/scientific investigation and comparing the signatures of Dr. Labanya Chandra Sahoo(Plaintiff) and submit a report to that effect. Although the Plaintiff-Opposite Party admitted his signature accepting the receipt of Rs.2,50,000/-, learned trial Court refused to send it for scientific investigation

holding that documents upon which the relief has been sought for, are not admitted in evidence and the Defendant has filed Xerox copies of those documents.

4. It is submitted by Mr. Dey, learned counsel for the Petitioner that Xerox copy of the bank draft has already been admitted as Ext.B and money receipt has already been admitted as Ext. C. Thus, there is no difficulty on the part of learned trial Court to send the same to the handwriting expert.

5. Since Mr. Dey, learned counsel for the Petitioner submits that the Plaintiff-Opposite Party has already admitted his signature in Exts.B and C, there is no necessity to send those documents for examination by the expert. The purpose of sending those documents to the handwriting expert for comparison and scientific investigation is also not clear from the petition under Order XVI Rule 10-A C.P.C. (C.M.A. No.3 of 2020).

6. In view of the above, I am not inclined to interfere with the impugned order under Annexur-3. Since the order under Annexure-3 is not appealable under Section 104 read with Order XLIII C.P.C., no interference in order under Annexure-4 i.e. order dated 18th May, 2022 passed by learned District Judge, Cuttack in F.A.O. No.18 of 2022 is warranted.

7. 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