

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 897 OF 2022

Jinmayee Das and another ***Petitioners***

Mr. Niranjana Prasad Patra, Advocate

-versus-

Shantilata Rout and another ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
22.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 4th May, 2022 (Annexure-6) passed by learned Additional District Judge, Athagarh in F.A.O. No.09 of 2020, whereby he set aside the order dated 20th November, 2020 (Annexure-5) passed by learned Senior Civil Judge, Athagarh in I.A. No.35 of 2020 (arising out of C.S. No.44 of 2020) rejecting an application filed by the Opposite Party No.1 under Order XXXIX Rules 1 and 2 C.P.C.
3. Mr. Patra, learned counsel submits that the Petitioners were not duly served with notice in F.A.O. No.9 of 2020. Referring to the order dated 19th April, 2021, learned counsel for the Petitioner submits that notice on the Petitioner No.1 (Respondent No.2 therein) returned unserved and the Appellant-Opposite Party No.1 was directed to take fresh steps. Till 2nd November, 2021, no fresh step for issuance of notice on the present Petitioner No.1 was taken. However, learned Additional District Judge, Athagarh considering the petition filed by the

Appellant under Order V Rule 9(5) C.P.C. held the service of notice on the present Petitioner No.1 to be sufficient vide order dated 2nd November, 2021. It is his submission that since notice has already returned unserved on the present Petitioner No.1, the provision under Order V Rule 9(5) C.P.C. is not applicable to the instant case. Said Petitioner No.1 and her minor son (Petitioner No.2) were not given adequate opportunity to defend their case.

4. In that view of the matter, this Court is of the considered opinion that the Petitioners should be given an opportunity to move learned Additional District Judge, Athagarh with regard to sufficiency of notice on them.

5. Accordingly, this Court disposes of the CMP with an observation that in the event the Petitioners file an application for recall of the order dated 4th May, 2022 under Annexure-6 on the ground of insufficiency of notice along with certified copy of this order within a period of two weeks hence, the same shall be considered in accordance with law giving opportunity of hearing to the parties concerned.

6. Till disposal of the said petition, if filed within time stipulated above, the order dated 4th May, 2022 under Annexure-6 shall be kept in abeyance, which shall be subject to result of the aforesaid petition.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge