

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 926 OF 2022

Sasanka Prasad Panda

.... Petitioner

Mr. Samir Kumar Mishra,
Advocate

-versus-

Kuntala Sahoo

.... Opp. Party

Mr. Himansu Sekhar Mohanty,
Advocate

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

**ORDER
08.12.2022**

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 2nd August, 2022 (Annexure-11) passed by learned 3rd Additional Civil Judge (Senior Division), Cuttack in CS No.3275 of 2014 (III), whereby an application filed by the Plaintiff-Opposite Party under Order VI Rule 17 CPC, has been allowed.
3. Mr. Mishra, learned counsel submits that Defendant is the Petitioner in the CMP. The suit has been filed for recovery of certain amount and for damages along with interest *pendente lite* and future till realization of the entire amount. At para-3 of the plaint, the Plaintiff has categorically stated that last payment was made on 10th January, 2011 and in para-4, it has been stated that a cheque bearing No.546364 dated 17th May, 2011 for an amount of Rs.1,17,700/- drawn on Bank of Baroda, Cuttack Branch, Cuttack was given to the Plaintiff against the outstanding dues, but the said cheque was dishonoured and

informed to the Plaintiff on 24th May, 2011. By filing written statement, the Petitioner/Defendant categorically stated that no cheque was issued by the Defendant on 17th May, 2011. After receipt of the written statement, the Plaintiff filed an application under Order VI Rule 17 CPC on 31st January, 2019 to incorporate the pleadings at para-3 to the effect that all payments were made through cheques more particularly with effect from 3rd April, 2010 to 17th May, 2011 by the Defendant through Bank of Baroda, Cuttack Branch. The Defendant filed objection stating that if the amendment is allowed, it would amount to patch up the lacunae, as it has been stated in the written statement that the plaint is barred by limitation. Learned trial Court considering the same, rejected the petition for amendment vide order dated 2nd April, 2019 (Annexure-5).

3.1 Subsequently, Plaintiff/Opposite Party filed an application under Order VI Rule 16 CPC to delete the word 'last' from paras-3 and 6 of the plaint. The Defendant also filed objection to the same. By order dated 16th May, 2019 (Annexure-8), learned trial Court holding that if the present petition under Order IV Rule 16 CPC to strike out the word 'last' is allowed, then it would change the meaning of pleadings mentioned in the paras-3 and 4 of the plaint. Further, it would frustrate the averments of the Defendant in para-8 of the written statement. To get over the aforesaid two orders, the Plaintiff again filed an application under Order IV Rule 17 CPC to amend para-2 of the plaint to incorporate amongst other, the pleading to the effect that cheque dated 10th January, 2011 was paid by the Defendant, so also cheque dated 17th May, 2011. All the cheques were paid

by the Defendant towards merchandise receipt by him from the Plaintiff. Although objection to the effect that similar nature of prayers have already been rejected, but learned Trial Court vide Order dated 2nd August, 2022, without referring the same, allowed the application under Order VI Rule-17 CPC holding that unless the proposed amendment is allowed, the plaintiff would sustain loss which cannot be compensated by any means. It was also observed that the amendment sought for will not change the nature and character of the suit and it is required for proper adjudication of the suit.

3.2 Mr. Mishra, learned counsel for the Petitioner further submits that by virtue of the amendment, the Opposite Party impliedly took away the admission in the plaint only to get rid of lacunae to the effect that the suit is barred by limitation. This material objection though raised by the Defendant/Petitioner was not taken into consideration by the learned trial Court. Hence, the impugned order is not sustainable.

4. Mr. Mohanty, learned counsel for the Plaintiff/Opposite Party objecting to such submission contended that reference to the above cheque dated 17th May, 2011 has been made in different paragraphs of the plaint. Further, the nature of amendment sought for earlier either in the application under Order VI Rule 17 CPC or in the application under Order VI Rule 16 CPC, is quite different from the present one. The Opposite Party did not seek any amendment which would take away the pleadings that the last payment was made on 10th January, 2011. The amendment sought for was only clarificatory in nature and necessary for proper adjudication of the suit, as observed by

learned trial Court. It is his submission that all the payments were made through cheques. Thus, it was required on the part of the Plaintiffs to elaborate the same for proper adjudication of the suit. Thus, learned trial Court has not committed any error in allowing the application for amendment. He, therefore, prays for dismissal of the CMP.

5. Considering the rival contentions of learned counsel for the parties and on perusal of record, it appears that earlier the Defendant had filed an application for amendment to incorporate the pleadings with regard to the payment made by the Defendant through cheque dated 17th May, 2011. Learned trial Court considering the fact that it would patch up the lacunae in the plaint, rejected the same. Subsequently, the Plaintiff had made an attempt by filing an application under Order VI Rule 16 CPC to delete the word '*last*' in paras-3 and 6 of the plaint. The said application under Order VI Rule 16 CPC was also rejected. Those orders were never challenged and attained finality. However, in order to get over the lacunae in the pleadings made in the plaint, the Plaintiff adopted a novel idea in making a prayer to amend para-2 of the plaint only by introducing a pleading to that effect '*cheque dated 10th January, 2011 was paid by the Defendant so also the cheque dated 17th May, 2011.*' All the cheques were paid by the Defendants towards the merchandise receipt by him from the Plaintiff. Such a pleading is only meant to get over the orders of rejection of earlier amendment/deletion of the pleadings sought for by the Plaintiff. Further, it appears that learned trial Court has failed to take into consideration the objections raised by the Defendants to that

effect. By explaining the case of the respective parties, it jumped to the conclusion that amendment is necessary for proper adjudication of the suit. Further, learned trial Court, without considering the requirement of Order VI Rule 17 CPC, observed in the impugned order that the Plaintiff will sustain irreparable loss and injury, which cannot be compensated by any means, and allowed the amendment. Such findings are not relevant for consideration of application under Order VI Rule 17 CPC. In that view of the matter, the impugned order is not sustainable and is accordingly set aside.

5.1 The matter is remitted back to learned trial Court to consider the application under Order VI Rule 17 CPC afresh, taking into consideration the rival contentions of the parties and giving opportunity of hearing to them.

6. With the aforesaid observation and direction, the CMP is disposed of.

Issue urgent certified copy of this order on proper application.

(K.R. Mohapatra)
Judge