

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 931 OF 2022

Pradipta Kumar Pradhan ***Petitioner***

Mr. Santosh Kumar Samantaray, Advocate

-versus-

Pravati Mahapatra ***Opp. Party***

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

28.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 22nd August, 2022 (Annexure-4) passed in C.S. No.136 of 2018, whereby learned Civil Judge (Senior Division), Puri refused to adjudicate upon inaction of the Opposite Party to respond to the notice served on the Defendant-Opposite Party under Order XI Rule 16 C.P.C.
3. Mr. Samantaray, learned counsel submits that Plaintiff is the Petitioner in this CMP. As the Defendant referred to certain documents, which were not within the knowledge of the Plaintiff, he served upon a notice in proper format on the Defendant to inspect those documents. Although Order XI Rule 17 C.P.C. provides that the Defendant upon receipt of such notice shall respond within 10 days giving a time to inspect, providing three days time for the same, the Defendant failed to do so. Accordingly, the matter was placed before learned trial Court for consideration. Learned trial Court without adhering to the procedure provided under Order XI Rules 17 and 18 C.P.C.,

rejected the petition holding that Order XI Rule 16 C.P.C. does not prescribe any procedure for the Court to direct to produce any document.

4. On perusal of the impugned order under Annexure-4, it appears that learned trial Court did not make any endeavour to examine the procedure prescribed under the Code of Civil Procedure to take appropriate steps, in the event the Defendant fails to respond the notice under Order XI Rule 16 C.P.C.. Learned trial Court before passing the impugned order under Annexure-4 should have made an endeavour to read the statute. In view of the above, the impugned order under Annexure-4 is not sustainable and is liable to be set aside.

5. Since ten days have already elapsed from the date of service of notice on the Defendant under Order XI Rule 16 C.P.C., learned Senior Civil Judge, Puri is required to follow the procedure under Order XI Rule 18 C.P.C.

6. Accordingly, the impugned order under Annexure-4 is set aside. Learned trial Court is directed to adjudicate the matter in accordance with law giving opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge