

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 937 OF 2022

Radhaballava Meher *Petitioner*
Mr. B.S. Das, Advocate
-versus-
Dhanamati Meher and others *Opp. Parties*

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.11.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 10th March, 2022 (Annexure-6) passed by learned District Judge, Jharsuguda in F.A.O. No.02 of 2018, whereby he dismissed the appeal and confirmed the order dated 18th July, 2018 (Annexure-4) passed by learned Senior Civil Judge, Jharsuguda in CMA No.03 of 2017 (arising out of C.S. No.157 of 2013), rejecting an application under Order IX Rule 13 C.P.C.
 3. Mr. Das, learned counsel submits that the Petitioner was the Defendant in C.S. No.157 of 2013. After receiving summon, he could not appear and contest the suit. Consequently, the suit was decreed *ex parte* on 27th January, 2016. The Petitioner was suffering from Arthritis from 20th January, 2014 to 21st February, 2017. On his recovery, he filed an application under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree and to hear the suit on merit. The said application was dismissed vide order dated 18th July, 2018 under

Annexure-4 on the ground that although the Petitioner was suffering from Arthritis, but he was being treated by a pediatric specialist. Learned appellate Court confirmed the order on the same finding.

4. Mr. Das, learned counsel for the Petitioner submits that the treating physician is a family doctor of the Petitioner. Hence, there is nothing wrong on the part of the Petitioner to be treated with him. Due to the *ex parte* decree, the Petitioner lost a valuable right. As such, he should given an opportunity of hearing. Hence, he prays for setting aside the impugned orders under Annexures-4 and 6.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, more particularly, the impugned order under Annexure-6, it is apparent that the Petitioner was being treated at Jharsuguda for his alleged suffering. In his evidence, he has also stated that he was coming to Jharsuguda two to three times in a month for his treatment. When the Petitioner could come from Belpahar to Jharsuguda for his treatment on two to three occasions in a month, this Court is not in a position to comprehend as to why the Petitioner could not attend the Court and contest the suit. Learned trial Court has also expressed the same feeling and opined that the intention of the Petitioner was not to participate in the proceeding, but to drag the litigation.

6. On perusal of the impugned orders under Annexures-4 and 6, it is also appears that learned trial Court disbelieved the illness of the Defendant-Petitioner for a long period of three years, as it was not supported by cogent materials. Although the

treating physician was examined, nothing came out from his evidence to the effect that the Petitioner was not in a position to attend the Court. The conduct of the Petitioner clearly exhibits that he was not at all interested in pursuing the litigation, but has intention only to drag the same.

7. In view of the discussion made above, I find no infirmity in the impugned orders under Annexures-4 and 6.

8. Accordingly, this CMP being devoid of any merit stands dismissed.

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

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