

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 942 of 2022

Bikali Swain and another* *Petitioners

Mr. Bhaskar Chandra Panda, Advocate

-versus-

Bibekananda Swain and another* *Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

30.09.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Petitioners in this CMP pray for a direction to modify the order dated 13th July, 2022 (Annexure-5) passed by learned District Judge, Kendrapara in FAO No.17 of 2021, whereby he remitted the matter back to learned trial Court to adjudicate IA No.321 of 2020 (arising out of CS No.335 of 2020) afresh holding that the parties shall maintain status quo over the suit property till disposal of the petition under Order VI Rule 17 CPC.
3. Mr. Panda, learned counsel for the Petitioners submits that after remand, IA No.321 of 2020 is pending for adjudication. However, under a wrong impression, learned counsel for the Petitioners could not file any application for continuance of the interim order of status quo before the trial Court. Thus, after disposal of the petition under Order VI Rule 17 CPC, Opposite Parties are continuing construction over the suit property. At the initial stage, interim order of status quo was continuing during pendency of IA No.321 of 2020 as well as pendency of the Appeal, i.e., FAO No.17 of 2021. Hence, he

prays for a direction to modify the interim order of status quo and to direct the parties to maintain status quo till disposal of the IA No.321 of 2020.

4. Upon hearing learned counsel for the Petitioners and on perusal of record, it is apparent that while disposing of the Appeal in FAO No.17 of 2021, learned District Judge, Kendrapara directed the parties to maintain status quo over the suit property till disposal of the petition under Order VI Rule 17 CPC, which was directed to be disposed of within one month of receipt of the said order giving opportunity to both parties and not granting unnecessary adjournment to either party. Accepting the said order, Petitioners contested the petition under Order VI Rule-17 CPC and have never filed any petition for continuance of interim order of status quo before the learned trial Court. After disposal of Order VI Rule 17 petition when the Opposite Parties allegedly proceeded with construction, this CMP is filed. On perusal of order under Annexure-5, it reveals that there is no absolute bar to continue the interim order of status quo in an appropriate situation.

5. In view of the above, this Court is not inclined to interfere with the order impugned herein. However, it is observed that the Petitioners are at liberty to file an application for continuance of the interim order of status quo before the trial Court and in that event, the same shall be considered in accordance with law.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge