

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 953 of 2022

Hemalata Sahu @ Jena and another ***Petitioners***
Mr. Debendra Kumar Sahoo-1, Advocate

-versus-

Sita Sahoo and others ***Opp. Parties***
Mr. Amit Prasad Bose, Advocate
(For Opposite Party No.1)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
17.11.2022

Order No.

03. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 26th August, 2022 (Annexure-8) passed in RFA No.186 of 2019, whereby learned District Judge, Balasore rejected an application by refusing to recall the order dated 10th December, 2021 passed by it.
3. Mr. Sahoo, learned counsel for the Petitioners submits that Opposite Party No.1-Smt. Sita Sahoo filed RFA No.186 of 2019 assailing the judgment and decree passed in CS No.1575 of 2018 of the Court of Senior Civil Judge, Balasore. It is his submission that Opposite Party No.1 was not a party to the suit. The suit was compromised between the parties in National Lok Adalat held on 15th December, 2018. Hence, the Opposite Party No.1 could not have filed an appeal assailing the said award passed in National Lok Adalat. It is his submission that along with the appeal memo, the Opposite party No.1 had also filed an

application for grant of leave to prosecute the appeal and for condonation of delay. All the applications were taken up together and order dated 10th December, 2021 has been passed. Assailing the same, Petitioners preferred CMP No.86 of 2022, which was disposed of vide order dated 11th February, 2022 with the following order:-

“1. Heard learned counsel for the Petitioners

2. The grounds raised herein can very well be attended in the appeal proceeding since the Appeal is yet to be attempted only at the stage of grant of relief. In the event any objection is already there on the Board of the Appellate Authority, admissibility of the Appeal may be considered keeping in view the objection of the Petitioners.

3. The CMP stands disposed of accordingly.”

3.1 It is his submission that while disposing of the CMP, this Court has directed learned appellate Court to consider the admissibility of the appeal keeping in view the objections filed by the Petitioners. Learned District Judge overreaching the said direction refused to consider the admissibility of the appeal on the plea that the appeal has already been admitted vide order dated 10th December, 2021, which might not have brought to the notice of this Court at the time of disposal of CMP No.86 of 2022.

4. It is his submission that the order passed in CMP No.86 of 2022 has never been modified or varied. Thus, in all fairness learned District Judge ought to have consider the admissibility of the appeal taking into consideration the objection filed by the Petitioners. He, therefore, prays for setting aside the impugned order and direct learned District Judge, Balasore to consider the admissibility of the appeal afresh.

5. Mr. Bose, learned counsel for Opposite Party No.1 objecting to the same submits that by order dated 10th December, 2021, learned District Judge, Balasore, while granting leave to Opposite Party No.1 to prosecute the appeal and condoning the delay, has admitted the appeal. Said fact was probably not brought to the notice of this Court at the time of disposal of CMP No.86 of 2022. Perusal of order passed in CMP No.86 of 2022 also makes it clear. Since the question of admissibility of the appeal had already been considered and the order dated 10th December, 2021 was not set aside by this Court. Learned District Judge, Balasore proceeded on an impression that the question of admissibility is not required to be considered afresh. As such, there is no illegality in the impugned order.

6. Taking into consideration the rival contentions of the parties and order passed in earlier CMP No.86 of 2022, it is clear that this Court directed learned appellate Court to consider the question of admissibility of the appeal keeping in mind the objection filed by the Petitioners. Perusal of impugned order, makes it clear that the order of this Court passed in CMP No.86 of 2022 has not been complied with in its letter and spirit. Learned District Judge did not at all make any attempt to adjudicate upon the objection filed by the Petitioners with regard to admissibility of the appeal.

6.1 Although vide order dated 10th December, 2021 the appeal has already been admitted, but in terms of the direction by this Court in CMP No.86 of 2022, learned District Judge was required to be consider the same afresh

7. In view of the above, the impugned order is not sustainable and is accordingly set aside. Learned District Judge, Balasore is directed to consider the admissibility of RFA No.186 of 2019 afresh taking giving opportunity of hearing to the parties concerned and taking into consideration the objection filed by the Petitioners, which is already available on record. It is made clear that that since on earlier occasion this Court has not interfered with the grant of leave to Opposite Party No.1 to prosecute the appeal as well as the order of condonation of delay in filing the appeal, learned District Judge is not required to consider the same afresh.

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

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy