IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 970 OF 2022

Sibapada Sen .... ***Petitioner***

Mr. Samir Kumar Mishra, Advocate

-versus-

Prasanna Kumar Patra and others .... ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No.	**26.10.2022**
1.	1. This matter is taken up through hybrid mode.

2. The Petitioner in this CMP seeks to assail the order dated 5th September, 2022 (Annexure-6) passed by learned 1st Senior Civil Judge, Balasore in Execution Case No. 21 of 2017 (arising out of C.S. No. 501 of 2010, whereby an application to direct the J.Dr. No.3, namely, Branch Manager, State Bank of India, Bhubaneswar to produce the details of loan account (statement) in respect of Mortgage No.94/1 against the loan dated 3rd January, 1994, has been rejected.

3. Mr. Mishra, learned counsel for the Petitioner submits that the Plaintiff filed C.S. No. 501 of 2010 with a prayer for recovery of money and permanent injunction. The suit was decreed against the Defendants with the following order:

> *"The suit is decreed preliminarily on contest against defendants without cost.*
>
> *Def. Nos.1 & 2 are directed to pay Rs.6,72,000/- with interest at the rate of 8% per annum with P.I. and F.I. within a period of period of three months from the date of*

passing of this order failing which the plaintiff is at liberty to realize the same through the process of court.

The Judgment is pronounced in the open Court with my signature and seal of the Court on this the 14th day of March 2017 being transcribed to my dictation and corrected by me."

Ultimately, Execution Case No. 21 of 2017 was filed for execution of the decree. During pendency of the execution proceeding, the Petitioner filed an application for the aforesaid prayer, which was rejected vide impugned order under Annexure-6.

4. Mr. Mishra, learned counsel for the Petitioner-Plaintiff further submits that all throughout the Defendants have taken a stand that the property was mortgaged with the State Bank of India, Main Branch, Balasore-Opposite Party No.3. The said stand is also taken in the execution case objecting execution of the decree. Hence, loan statement of the said loan amount is necessary for hassle free execution of the decree. Learned executing Court without taking note of the same passed the impugned order. Hence, this CMP has been filed.

5. Upon hearing learned counsel for the Petitioner and on perusal of the preliminary decree passed in C.S. No. 501 of 2010 (Annexure-2), it appears that the Court has in unambiguous terms directed for recovery of Rs.6,72,000/- from Defendants-Opposite Party Nos.1 and 2. It is also submitted by Mr. Mishra, learned counsel for the Petitioner that in the suit itself, the Defendants have taken a stand that the property was mortgaged with the State Bank of India, Main Branch, Balasore-Opposite Party No.3. Thus, after the preliminary decree, such an objection loses its significance. Hence,

the documents relating to loan account (statement) is not required to be considered in an execution case. In that view of the matter, I find that learned trial Court has committed no error in refusing to entertain such an application.

6. Accordingly, the CMP being devoid of any merit stands dismissed.

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

bks

(K.R. Mohapatra)
Judge