

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP NO. 983 OF 2022**

***Sisir Kumar Mohanty***

....

***Petitioner***

Mr. Bibekananda Bhuyan, Advocate

*-versus-*

***Subash Chandra Choudhury and another***

....

***Opp. Parties***

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**26.10.2022**

**Order No.**

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 7<sup>th</sup> April, 2022 (Annexure-3) passed in C.S. No. 248 of 2009, whereby learned 2<sup>nd</sup> Additional Civil Judge (Senior Division), Cuttack, withholding the cross-examination of D.W.3 directed the Plaintiff to produce further evidence, if any, for re-examination and cross-examination. It was also observed that after closure of the evidence from the side of the Plaintiff, further cross-examination of D.W.3 will continue.
3. Mr. Bhuyan, learned counsel for the Petitioner submits that assailing the order of learned trial Court allowing an application for amendment of the written statement in the midst of hearing, the Petitioner had earlier moved this Court in CMP No. 1387 of 2017, which was disposed of vide order dated 28<sup>th</sup> March, 2022 with the following direction:

*“4. Considering the rival contentions of the parties, this Court even though finds there is delayed attempt in bringing the pleadings by way of proposed amendment, for the observation of the trial court, this Court finds the pleading was brought by way of*

*proposed amendment for the purpose of effective adjudication. Question comes here if there is prejudice to the plaintiff, looking to such attempt of the defendant taking place after closure of evidence of the plaintiff? Keeping this in view, this Court finds there is effective adjudication in the event of involvement of the proposed amendment at the stage of completion of evidence from plaintiff side further such amendment will also avoid multiplicity of litigation. This Court also finds in considering such aspect, the trial court has granted a sum of Rs.500/- as well approving the order as herein so far it relates to allowing the application under Order 6, rule 17 of the Code of Civil Procedure by defendant no.1. This Court however interferes with the grant of cost by enhancing the same to Rs.3,000/- (Rupees three thousand) be paid to the plaintiff in the court below within one week. The defendant no.1 is directed to file amended written statement, if not filed, at least within a period of seven days hence. On filing of additional written statement, if any, and production of receipt on payment of cost, the trial court shall suo motu allow recalling of plaintiff witness or witnesses and allow chief as well as further cross examination, if any, to the respective parties.*

*5. The Civil Miscellaneous Petition stands disposed of with the observation and direction made hereinabove.”*

4. When the order dated 28<sup>th</sup> March, 2022 passed by this Court was produced before learned trial Court, cross-examination of D.W.3 was continuing. Learned trial Court without allowing the Plaintiff-Petitioner to complete the cross-examination of D.W.3 held up the same and directed the Plaintiff-Petitioner to produce his witness for further examination and cross-examination. Hence, this CMP has been filed.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that D.W. 3 is in the witness box and is being cross-examined by the Plaintiff. Thus, without completing

the cross-examination of Plaintiff including on the additional written statement, which has been filed pursuant to the direction of this Court, learned trial Court should not have proceeded to examine any witness on behalf of the Plaintiff. Completion of cross-examination of D.W.3 will not prejudice any party. Further, this Court does not find any reason as to why the cross-examination of D.W.3 should be held up.

6. In that view of the matter, this Court keeping in mind that the suit is of the year, 2009 disposes of this CMP with a direction that learned trial Court shall allow the Plaintiff to complete the cross-examination of D.W.3 and thereafter, produce his witness for further examination and cross-examination as per the direction of this Court in CMP No. 1387 of 2017.

7. Since the CMP is disposed of without issuing any notice to the Opposite Parties, they are at liberty to seek variation of the same, if they feel aggrieved.

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

bks

(K.R. Mohapatra)  
Judge