

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO. 1018 OF 2022

D. Ananda Rao Dora **Petitioner**
Mr. Abinash Routray, Advocate
-versus-
S.D.O., Sonapur **Opp. Party**

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
21.11.2022

2. 1. This matter is taken up through hybrid mode.
2. 2. Order dated 9th September, 2022 (Annexure-10) passed in Civil Revision No.01 of 2022 is under challenge in this CMP, whereby learned District Judge, Sonapur dismissed the revision filed by the Petitioner and confirmed the order dated 10th March, 2022 (Annexure-7) passed by learned Civil Judge (Junior Division), Sonapur in CMA No.01 of 2022 (arising out of Execution Case No.07 of 1977) rejecting an application under Section 47 C.P.C filed by the Petitioner.
3. 3. Mr. Routray, learned counsel for the Petitioner submits that the execution case arises out of HRC Case No.1 of 1975. The order passed in the said HRC Case was the subject matter of dispute in OJC No.656 of 1978, which was disposed of vide order dated 22nd November, 1983 with the following order:

*“Both parties have filed a joint petition
of compromise.*

*Let the writ application be disposed of in
terms of the compromise petition.*

Parties to bear their own costs.”

4. However, Execution Case No.07 of 1977 was filed by the S.D.O., Sonapur, the Ex-Estate-in-charge of the property of late B.K. Babu @ Singhdeo (Court of Wards). The Petitioner being the Judgment Debtor (J.Dr.) was summoned. On his appearance, he filed a petition under Section 47 C.P.C. in CMA No.01 of 2022, which was rejected on the ground that the Petitioner has no *locus standi* to file such petition, as he has already been set *ex parte* on 10th August, 2021 in the execution proceeding. Subsequently, an application to set aside the said *ex parte* order was filed, which was also dismissed vide order dated 28th February, 2022. It is his submission that in view of the compromise arrived at between the parties before this Court in OJC No.656 of 1978, the execution case is not maintainable at all. This aspect was lost sight of by learned Executing Court. The revisional Court also committed the same error by confirming the order under Annexure-7. Hence, this CMP has been filed.

5. Mr. Mishra, learned Additional Standing Counsel, on the other hand, submits that once the Petitioner has been set *ex parte* and the petition for setting aside the *ex parte* order has been dismissed, he has no *locus standi* to file an application under Section 47 C.P.C. As such, learned Courts have committed no error in rejecting the application under Section 47 C.P.C. He further submits that the execution case has been filed since 1977. The Petitioner being the J.Dr. on some plea or other is dragging on the litigation. The S.D.O., Sonapur being the Court of Wards is competent to pursue the execution case.

Hence, learned Courts have committed no error in dismissing the application under Section 47 C.P.C. as not maintainable.

6. Considering the rival contentions of the parties and on perusal of the record, it appears that the Petitioner being the J.Dr. was set *ex parte* on 10th August, 2021. Subsequently, an application under Section 151 C.P.C. was filed to set aside the *ex parte* order, which was also dismissed vide order dated 28th February, 2022. Assailing the same, the Petitioner filed CMP No.215 of 2022 before this Court, which was dismissed as withdrawn vide order dated 16th March, 2022. As such, the order setting the Petitioner *ex parte* has attained its finality. After being set *ex parte*, the Petitioner has no *locus standi* to pursue an application under Section 47 C.P.C. Hence, learned Executing Court as well as Revisional Court have committed no error in holding that the petition under Section 47 C.P.C. is not maintainable.

7. In view of the above, the CMP being devoid of any merit stands dismissed.

8. The case record of OJC No.656 of 1978 be returned to the concerned Section forthwith.

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

(K.R. Mohapatra)
Judge

bks