

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1021 OF 2022

Nadini Devi and another ***Petitioners***

Mr. Manoj Mishra, Senior Advocate
being assisted by Mr. Tanmay Mishra, Advocate

-versus-

Raja Sri Ananta Narayan Singh Deo ***Opp. Parties***
and others

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
03.11.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioners in this CMP seek to assail the orders dated 11th February, 2022 (Annexure-2) passed by learned Civil Judge (Senior Division), Berhampur in T.S. No.112 of 1979, whereby he dismissed the suit for non-prosecution and order dated 26th March, 2022 (Annexure-4), whereby he refused to restore the suit.
 3. It is submitted by Mr. Mishra, learned Senior Advocate appearing for the Plaintiffs-Petitioners that since T.S. Nos. 112 of 1979, 75 of 1980 and 53 of 1981 were being heard analogously, the Plaintiffs under *bona fide* impression was taking step in T.S. No.53 of 1981 without filing any separate step in T.S. No.112 of 1979. Learned trial Court vide order under Annexure-2 taking into consideration the ratio in the case of *Asian Resurfacing of Road Agency Pvt. Ltd. and another* –

v- Central Bureau of Investigation, reported in reported in (2018) 16 SCC 299 resumed the normal proceeding of the suit on 26th February, 2021. Observing that the case is lingering in the file of the Court for more than forty years and this Court has instructed to dispose of old cases expeditiously, learned trial Court proceeded to dismiss the suit for non-prosecution. Although, an application for recall of that order and to restore the suit was filed, the same was rejected on the ground that though normal proceeding of the suit had resumed since 26th February, 2021, parties did not take any step to proceed with the suit. The suit was pending for forty years and the order of dismissal dated 11th February, 2022 was passed in view of the provision under Order XVII Rule 2 read with Order IX Rule 3 C.P.C. The petition for restoration was filed being supported with an affidavit sworn by one A.K.Gouda, who was not a party to the suit. Hence, he rejected the said application.

4. In view of the submission made by Mr. Mishra, learned Senior Advocate appearing for the Plaintiffs-Petitioners that vide order dated 29th January, 1996 passed in T.S. No.53 of 1981, three suits namely, T.S. Nos. 112 of 1979, 75 of 1980 and 53 of 1981 were directed to be heard analogously and the Plaintiffs in *bona fide* impression take steps in T.S. No.53 of 1981 only, this Court is of the considered opinion that learned trial Court should have verified the records before passing any order in dismissing the suit. It is also submitted that petition for restoration was filed by the Manager of the Plaintiffs being duly authorized by them. But the same was not considered by learned trial Court.

Since it is submitted that there is already a direction on 29th January, 1996 in T.S. No.53 of 1981 for analogous hearing as aforesaid suits, learned trial Court without insisting upon taking step in T.S. No.112 of 1979 ought to have proceeded with the suit in accordance with law.

5. Accordingly, the impugned order under Annexures-2 and 4 are set aside. Learned trial Court shall verify records of T.S. No.53 of 1981 and proceed with T.S. No.112 of 1979 in accordance with law.

6. The CMP is allowed to the extent stated above.

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

(K.R. Mohapatra)
Judge

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