

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1027 OF 2022

Parbati Dei and others

....

Petitioners

Mr. Dwarika Prasad Mohanty, Advocate

-versus-

Sukanti Pattnaik and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.10.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 13th October, 2022 (Annexure-5) passed by learned Civil Judge (Junior Division), Second Court, Cuttack in T.S. No.150 of 1996, whereby an application for adjournment for cross-examination of D.W.3 due to illness of learned counsel has been rejected.
3. Heard Mr. Mohanty, learned counsel for the Petitioners and perused the record.
4. It appears that the suit was posted to 13th October, 2022 for cross-examination of D.W.3 on which date an application for adjournment was filed stating that Mr. D.P. Mohanty, learned counsel for the Plaintiffs-Petitioners has undergone a surgery and is under treatment. He was also advised for a complete bed rest. Hence, a prayer for adjournment was made for cross-examination of D.W.3 till the end of October, 2022. Said application was rejected on the ground that D.W.3 is aged about 83 years and has been cross-examined on three occasions by the Plaintiffs. The Plaintiff No.2 being a Senior Advocate having 25 years of practice had already cross-examined the witnesses of Defendants. Mr. Mohanty, learned counsel appearing for

the Petitioners through virtual mode submits that he has, in fact, undergone a surgery and documents to that effect were produced before learned trial court. Further, he has been advised for a complete bed rest for which he is unable to attend the Court physically. Learned trial court while rejecting the petition also observed that since D.W.3 is aged about 83 years, it would not be convenient to cross-examine him through virtual mode. In that view of the matter, he submits that if he is permitted to cross-examine D.W.3 on any day after 4th November, 2022, he will be in a position to appear before learned trial court physically for cross-examination of D.W.3. The suit is posted to 21st October, 2022 for cross-examination of D.W.3.

5. Taking into consideration the peculiar facts and circumstances of the case, this Court disposes of this CMP with a direction that the matter shall be posted to 5th November, 2022 on which date the Plaintiffs shall cross-examine D.W.3 and all endeavour should be made to complete the cross-examination of D.W. 3 on that date. If, for any reason, the cross-examination of D.W.3 is not completed on 5th November, 2022, the cross-examination of D.W.3 shall in any event be completed on 9th November, 2022. The aforesaid direction shall be given effect to subject to payment of cost of Rs.2,000/- (Rupees two thousand) to D.W.3 through his counsel on 5th November, 2022.

6. The CMP is disposed of without issuing any notice as this Court feels that issuance of notice will further delay the matter. However, the Defendants if feel aggrieved by this order can move this Court for variation of the same.

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

(K.R. Mohapatra)
Judge