

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1028 of 2022

Anand Kumar Agarwal **Petitioner**
Mr.Kalinga Keshari Mohapatra, Advocate

-versus-

Rajabala Agarwal **Opp. Party**
Mr. Ajit Tripathy, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
29.11.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Mr. Tripathy, learned counsel enters appearance by filing Vakalatnama in Court, which is taken on record. He also files date chart along with certain documents, which are also taken on record.
3. Petitioner in this CMP seeks to assail the order dated 21st September, 2022 (Annexure-1) passed by learned 2nd Additional Senior Civil Judge, Cuttack in CS No.418 of 2011, whereby an application under Order XXVI Rule 1 CPC filed by the Petitioner has been rejected.
3. Mr. Mohapatra, learned counsel for the Petitioner submits that the Petitioner is the sole Defendant in the suit. He is aged about 69 years. After evidence of the Plaintiff is closed, the Defendant has already examined one witness. The Defendant himself has to lead evidence in the matter. But, he is bedridden due to Ankle Spondylites for last ten years. As such, he is not in

a position to appear before the Court physically to lead evidence. In support of his case, the Petitioner had also filed medical certificate issued by Dr. Surajit Sahu, who has certified that the Petitioner is completely bedridden. Hence, he filed an application under Order XXVI Rule 1 CPC to be examined by the Pleader Commissioner. The Petitioner had also filed an application of similar nature, which was rejected vide order dated 4th July, 2022. Assailing the said order, the Petitioner had preferred CMP No.691 of 2022, which was dismissed vide order dated 13th September, 2022. Further, this Court observed that the suit was being of the year 2011, learned trial Court should make an endeavour to see that the suit is disposed of at an early date. As the condition of the Petitioner deteriorated, a subsequent application was filed. Learned Civil Judge observing that the similar nature of application filed earlier has already been dismissed and that the Petitioner is a material witness, rejected the said application. Hence, this CMP has been filed.

4. In course of hearing, this Court suggested learned counsel for both parties to examine the Petitioner on virtual mode. Mr. Mohapatra, learned counsel for the Petitioner submits that in fact the Petitioner had filed an application to be examined on virtual mode, which was rejected. Mr. Tripathy, learned counsel for the Opposite Party submits that examination of the Petitioner through virtual mode may not be convenient for both parties.

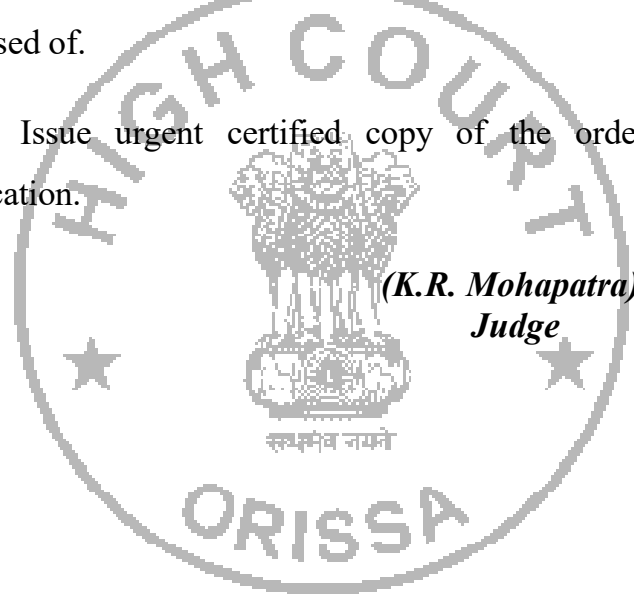
5. Since there is material on record to the effect that the Petitioner is bedridden and further this Court finds that he is 69 years old, it is observed that the Petitioner/Defendant should be examined

through Pleader Commission. It also appears that by resorting technicalities the disposal of the suit is being delayed.

5. In the result, the impugned order is set aside. This Court directs the Petitioner to take steps for issuance of Pleader Commission before learned trial Court forthwith. This Court also reiterates that since the suit is of the year 2011 endeavour should be made for early disposal of the same giving opportunity of hearing to the parties concerned.

6. With the aforesaid observation and direction, the CMP is disposed of.

Issue urgent certified copy of the order on proper application.



s.s.satapathy