

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1034 of 2022

Bibhudatta Patra and others ***Petitioners***
Mr. Dwarika Prasad Mohanty, Advocate

-versus-

Khulana Patra and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
14.12.2022

Order No.

IA No.1298 of 2022

2.
 1. This matter is taken up through Hybrid mode.
 2. This is an application for amendment of the CMP.
 3. Considering the submission made by learned counsel for the Petitioners, the IA is allowed. Amendment sought for as per the schedule of amendment appended to the application is allowed to be incorporated in the CMP.
 4. Consolidated CMP filed in Court is taken on record and be placed appropriately in the brief.
 5. The IA is disposed of.

(K.R. Mohapatra)
Judge

3. **CMP No.1034 of 2022**

1. Petitioners in this CMP seek to assail the order dated 7th September, 2022 (Annexure-6) passed in CMA No.13 of 2017 (arising out of CS No.888 of 2002-I), whereby learned Senior Civil Judge, Soro rejected the application filed by the Petitioners under Section 148 CPC to extend the period for payment of cost.

2. It is submitted by Mr. Mohanty, learned counsel that Petitioners are Plaintiffs in the suit. The suit was dismissed for default. Accordingly, CMA No.13 of 2017 was filed under Order IX Rule 4 CPC, which was allowed vide order dated 17th March, 2022 with the following direction.

“The CMA is allowed on contest against the O.P. Nos. 2, 5, 17 & 22 and on ex parte against other O.Ps. with cost of Rs.5,000/- (Rupees Five Thousand). The original suit is to (sic) be restored to its file on payment of cost of Rs.5,000/- (Rupees Five thousand) to O.P. Nos.2, 5, 17 & 22.

The applicants/plaintiffs to pay/deposit cost within fifteen days from today, failing which, the application will be deemed to be rejected. The present C.M.A. is disposed of accordingly.

The order is pronounced in the open court on this the 17th day of March, 2022 being transcribed to my dictation and corrected by me.”

As fifteenth day was expiring on 1st April, 2022 learned counsel for the Plaintiffs offered the cost to the counsel for the Defendants on 2nd April, 2022, which was refused to be accepted on the ground that the stipulated period for payment of cost has already expired. Accordingly, Petitioners filed an application on 13th April, 2022 under Section 148 CPC for extension of time to pay the cost.

2.1 Learned trial Court, vide order dated 7th September, 2022 under Annexure-6 holding that the order passed in CMA No.13 of 2017 was a conditional one and the CMA has already been dismissed due to non-compliance of the said order within the stipulated time, refused to entertain the application under Section 148 CPC. Hence, this CMP has been filed.

3. Mr. Mohanty, learned counsel for Petitioners submits that with all bona fide intention learned counsel for the Plaintiffs offered the cost to the counsel for the Defendants on

2nd April, 2022 with an impression that the cost is paid within the stipulated time, as 1st April, 2022 was a holiday. Learned counsel for the Defendants refused to accept the same as fifteen days for payment of cost from the date of allowing the CMA had already expired. Plaintiffs/Petitioners thereafter filed an application under Section 148 CPC. Since the Plaintiffs/Petitioners are interested to prosecute the suit and have offered the cost just on the next day of expiry of the stipulated period, it, in all fairness, should have been allowed. Learned trial Court being hyper-technical refused to entertain the same. It is his submission that the Court could have exercised its power under Section 151 CPC for the ends of justice while entertaining the application filed under Section 148 CPC in directing the Defendants to accept the cost. He, therefore, submits that the application under Section 148 CPC should be re-considered treating it to be a petition under Section 148 read with Section 151 CPC.

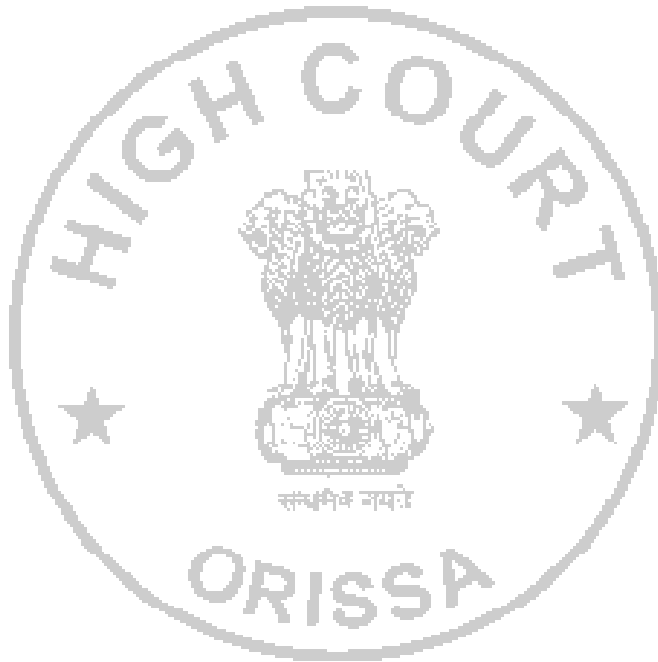
4. Taking into consideration the submission made by learned counsel for the Petitioners and keeping in mind that the suit is of the year 2002, this Court, instead of issuing notice to Opposite Parties, feels it proper to dispose of the CMP with a direction that in the event Petitioners make appropriate application for recall of order dated 7th September, 2022 (Annexure-6) and to adjudicate the petition under Section 148 CPC afresh in accordance with law exercising its inherent power keeping in mind that Petitioners' interest to contest the suit on payment of cost, by extending opportunity of hearing to the parties concerned. Learned trial Court, if feels that the petition under Section 148 CPC should be allowed, may impose

higher cost as would be deemed just and proper in the facts and circumstances of the case.

5. Since the CMP is disposed of without issuing notice to Opposite Parties, they are at liberty to move this Court, if they feel aggrieved by this order.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy