

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.237 of 2021

KD Gold and Diamonds Private Limited ***Appellant***

Mr. Manish Vashist, Senior Advocate

-versus-

M/s.Khimji & Sons ***Respondent***

Mr. Gautam Mukherji, Senior Advocate

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
22.11.2022

Order No.

09.

1. Heard Mr. Manish Vashist, learned Senior Advocate for the Appellant and Mr. Gautam Mukherji, learned Senior Advocate for the Respondent.

2. Present appeal is directed questioning order dated 01.03.2021 of the learned District Judge, Khurda at Bhubaneswar passed in I.A. No.01 of 2021 arising out of C.S. No.02 of 2021, wherein the prayer of the Respondent for ad-interim injunction under Rule 3 of Order 39, C.P.C. has been allowed.

3. Admittedly upon receipt of notice, the Appellant, who was Defendant before the learned District Judge, has entered appearance and filed his reply. However, due to some dispute regarding jurisdiction, the matter could not be decided finally. But now in view of the order passed in CRP No.9 of 2021, the dispute has been set at rest and the learned District Judge, Khurda at Bhubaneswar has been accepted to be the competent court to decide the dispute.

4. It is submitted by both the parties that, the application under Rule 1 & 2 of Order 39, C.P.C. for injunction filed by the Plaintiff is fixed for hearing on 1st December, 2022 by the learned District Judge. Since the present impugned order in the appeal is an order passed under Rule 3 of Order 39, C.P.C., it is desirous on the part of the court to pass the order under Rule 1 & 2 upon appearance of the Defendant in the suit, which would be the substantial order.

5. In the circumstances stated above and considering the temporary status of the impugned order, the appeal is disposed of with a direction to both the parties to pursue their case under Order 39, Rule 1 & 2, C.P.C. before the learned District Judge, Khurda at Bhubaneswar in I.A. No.1 of 2021 arising out of C.S. No.2 of 2021, with the observation that the learned District Judge shall do well to dispose of I.A. No.1/2021 in accordance with law and uninfluenced by any such observation made by him in the impugned order, within a period of sixty (60) days from 1.12.2022, after giving opportunity of hearing to both the parties concerned.

6. The parties undertake to appear before the learned District Judge, Khurda at Bhubaneswar on 1st December, 2022. Further, both the parties are directed to cooperate in disposal of the I.A. before the learned District Judge in time.

7. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge