

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1048 OF 2022

Pradeep Kumar Moharana

....

Petitioner

Mr. Sibanarayan Biswal, Advocate

-versus-

Bijayalaxmi Samal

....

Opp. Party

Mr. Sarathi Jyoti Mohanty, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 23.09.2022 (Annexure-8) passed by the learned Senior Civil Judge (Commercial Court), Bhubaneswar in C.S. No. 1558 of 2018, whereby an application filed by the Plaintiff-Opposite Party under Order 6 Rule 17 CPC has been allowed.
3. Mr. Biswal, learned counsel for the Petitioner submits that originally Plaintiff at Para-14.1 of the plaint sought for the following relief:

14.1. Let the deed of agreement for development SL No. 790 dated 01.07.2011 executed before P.K. Dalabehera, Notary Public, Bhubaneswar and subsequent agreement dated 16.12.2016 and 17.12.2016 by the plaintiff in favour of defendant No. 1 over the A schedule property are liable to be declared as cancelled.

4. By virtue of amendment the Plaintiff seeks to delete said prayer. As a consequence of deletion the Plaintiff sought for amendment of violation of the suit. The Plaintiff also prayed to

introduce certain facts which were not available in the plaint earlier. At Para-11 of the plaint the Plaintiff sought for introduction of a pleading to the effect that the original development agreement at Serial No. 790 dated 01.07.2011 and General Power of Attorney dated 01.07.2011 are with the Defendant No.1. So, also the original agreement dated 16.12.2016, allocation of share dated 16.12.2016 and agreement dated 17.12.2017 are with the Defendant No.1. Likewise, the Plaintiff sought for amendment to introduce certain other facts in its pleadings. Learned Trial Court observing that trial of the suit has not commenced and the Defendants are not aggrieved by deletion of prayer as well as amendment of the valuation of the suit, allowed the application for amendment. Assailing the same CMP has been filed.

5. Mr. Biswal, learned counsel for the Petitioner further submits that the Defendant in its written statement has categorically stated that agreement dated 16.12.2016 is not available with him. Thus, introduction of such pleading is nothing but to patch up the lacunae in the pleadings of the Plaintiff. He however admits that trial of the suit has not yet commenced, but amendment was sought for after 5 years of filing of the plaint. This being a commercial suit should be disposed of within a time frame as provided in Code of Civil Procedure. Thus the amendment will not only linger the suit but also seriously prejudice the Defendant.

6. Mr. Mohanty, learned counsel for the Opposite Party submits that although he has filed his Vakalatnama, on 13.11.2022, but the same is not available on record. He,

however, submits that learned Trial Court has rightly held either deletion of prayer at Para.14.1 of the plaint or amendment of valuation of the suit for that reason does not prejudice the Petitioner/Defendant. The rest of the amendment sought for are only clarificatory in nature and will be essential for just and effective adjudication of the suit. The Plaintiff in its plaint has categorically made a statement on affidavit that agreement dated 16.12.2016 is available with the Defendant-Petitioner and a prayer to call for such document has also been rejected by learned Trial Court. Thus, this CMP merits no consideration and liable to be dismissed.

7. Vakalatnama stated to have been filed by Mr. Mohanty, learned counsel appearing for Opposite Party be brought on record.

8. Considering the rival contentions of the parties and on perusal of the records this Court finds that by virtue of the petition for amendment the Plaintiff-Opposite Party sought for deletion of prayer at Para-14.1 of the plaint and for that reason he sought for amendment of the valuation of the suit. As rightly observed by learned Trial Court, the same at no stretch of imagination, will prejudice the Defendant. So far as rest of the pleadings sought to be amended, are concerned, those are clarificatory in nature and with regard to the agreement dated 16.12.2016 the Plaintiff has already made a declaration that the same is available with Defendant No.1, in his plaint. It is also apparent that trial of the suit has not yet commenced. Since the amendment is necessary for adjudication of the suit and the Defendant-Petitioner has an opportunity to file an additional

written statement to the amended plaint, this Court finds no infirmity in the impugned order.

9. Accordingly, the CMP being devoid any merit stands dismissed.

(K.R. Mohapatra)
Judge

Sangram Das

