

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1057 OF 2022

Ram Pratap Kheria and others* *Petitioners

Mr. Bibekananda Bhuyan, Advocate

-versus-

Ranjan Kumar Pradhan and another* *Opp. Parties

Miss Pratyusha Naidu, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

08.12.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seeks for a direction to set aside the order dated 17th August, 2022 (Annexure-8) passed by learned Civil Judge (Junior Division), Bhubaneswar in I.A. No. 57 of 2006 (arising out of C.S. No.891 of 2005) rejecting an application filed by them under Section 151 C.P.C. to dismiss the proceeding initiated under Order XXXIX Rule 2-A C.P.C. against them.
3. Mr. Bhuyan, learned counsel for the Petitioners submits that in C.S. No. 891 of 2005, an application under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No.810 of 2005 was filed. The Petitioner No.1 was not a party to the said petition. Learned trial Court vide order dated 19th December, 2005 directed the parties to the said petition to maintain status quo over the suit property. Subsequently, on 18th February, 2006, an application Order XXXIX Rule 2-A C.P.C. (I.A. No.57 of 2006) was filed impleading the Petitioner No.1 as Opposite Party No.2 to the said

petition. He further submits that since the Petitioner No.1 was not a party to the petition filed under Order XXXIX Rules 1 and 2 C.P.C., the order of status quo passed by learned trial Court is not binding on him. However, learned trial Court without appreciating the same continued with the proceeding under Order XXXIX Rule 2-A C.P.C. During pendency of the said proceeding, this Court in CMP No. 301 of 2018 disposed of on 2nd May, 2018 (***Ghanashyam Pradhan and others –v- Ram Pratap Kheria***, reported in 2018 (I) ILR CUT-936) held as under:

“16. For the aforesaid discussion and reasons, the application stands dismissed.

The executing court is directed to take all such effective steps as provided in law to see that the execution proceeding stands culminated with fruitful execution of the decree in accordance with law as expeditiously as possible preferably by the end of June, 2018 under a compliance report to this Court by the end of July, 2018.”

4. The Petitioner No.1 was the Opposite Party No.1 in the said CMP. In view of the direction made in the said CMP, the father of Opposite Parties delivered possession of the suit premises to the Petitioners on 2nd June, 2018. Thus, the Petitioners filed an application under Section 151 C.P.C. to dismiss the petition under Order XXXIX Rule 2-A C.P.C. against them. Learned trial Court although observed that discretionary power under Section 151 C.P.C. can be exercised to prevent the abuse of the process of Court, but refused to entertain the application filed under Section 151 C.P.C. It is further submitted that after the direction of this Court in CMP No.301 of 2018, when the possession of the suit premises was delivered by the father of Opposite Parties to the

Petitioners, the proceeding under Order XXXIX Rules 1 and 2 C.P.C. against them is not maintainable. Continuance of the proceeding after the direction of this Court is a sheer abuse of the process of Court. Learned trial Court failed to appreciate this aspect and dismissed the petition. Hence, this CMP has been filed.

5. Miss Naidu, learned counsel for the Opposite Parties submits that after the order of status quo was passed directing the parties to maintain status quo in the petition under Order XXXIX Rules 1 and 2 C.P.C., the Opposite Party therein, namely, Sarat Chandra Behera and others along with some anti-socials forcibly entered into the premises of the Opposite Parties and demolished the boundary wall and some portions of the residential house of Opposite Parties and put the Petitioners in possession. Hence, the Petitioners are equally liable for violation of the order of status quo even though the Petitioner No.1 was not a party to the petition under Order XXXIX Rules 1 and 2 C.P.C. The contention raised by Mr. Bhuyan, learned counsel for the Petitioners is subject to appreciation of the Court taking into consideration the materials available on record. The petition under Section 151 C.P.C. was filed by the Petitioners at a stage when the proceeding under Order XXXIX Rule 2-A C.P.C. was posted for cross-examination of O.P.W.1, namely, present Petitioner No.1. Thus, dismissal of the petition under Order XXXIX Rule 2-A C.P.C. at this stage will certainly prejudice the Opposite Parties. Hence, she prays for dismissal of CMP.

6. Considering the rival contentions of the parties and on perusal of the record, this Court finds that the petition under Order

XXXIX Rule 2-A C.P.C. is posted for cross-examination of the Petitioner No.1, who is being examined as O.P.W.1. The contention raised by Mr. Bhuyan, learned counsel for the Petitioners to the effect that pursuant to the direction of this Court in CMP No.301 of 2018, possession of the suit premises was delivered to the Petitioners by the father of Opposite Parties, is a matter of appreciation by considering the materials on record. True it is that the Petitioner No.1 was not a party to the petition under Order XXXIX Rules 1 and 2 C.P.C., but after receiving the notice in the petition under Order XXXIX Rule 2-A C.P.C., he participated in the proceeding by filing objection and at present he is in the witness box for cross-examination. At this stage, an application for dismissal of the petition under Order XXXIX Rule 2-A C.P.C. against him was filed by the Petitioners stating the aforesaid facts as narrated by Mr. Bhuyan, learned counsel for the Petitioners. Since the Petitioner No.1 being aware of the fact that he was not a party to the proceeding under Order XXXIX Rule 2-A C.P.C. contested the proceeding, a petition under Section 151 C.P.C. to dismiss the petition under Order XXXIX Rule 2-A C.P.C. against him, at this stage when he is in the witness box, is nothing but to avoid the rigorous of the proceeding under Order XXXIX Rule 2-A C.P.C. Had such a petition been filed at the threshold, when he entered appearance, it could have made some sense. Hence, learned trial Court has committed no error in dismissing the petition filed under Section 151 C.P.C. Thus, this Court is not inclined to interfere with the impugned order under Annexure-8.

7. Accordingly, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks

