

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1074of 2022

Amarkanta Panda

.... Petitioner

Mr. Prafulla Chandra Das, Advocate

-versus-

Dr. Suresh Chandra Mishra

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

03.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 23rd September, 2022 (Annexure-1) passed by learned Civil Judge (Senior Division), Bhubaneswar in CS No.1373 of 2021, whereby an application under Order IX Rule 7 CPC was disposed of by setting aside the ex-parte order passed against the Petitioner. However, the prayer for acceptance of written statement was rejected and the Defendant / Petitioner was given the opportunity to cross-examine the witness of the Plaintiff / Opposite Party.
3. It is submitted by Mr. Das, learned counsel for the Petitioner that although the Defendant received the summons in the suit, but due to some unavoidable circumstances, he could not file his written statement. After closure of the evidence of the Plaintiff, the suit was posted for argument. At this stage, the Petitioner filed an application under Order IX Rule 7 CPC on 22nd July, 2022 and the impugned order has been passed.
4. Since the evidence of the Plaintiff has already been closed and the suit is posted for argument, this Court finds that

learned trial Court has committed no error in allowing the Petitioner to cross-examine the witness of the Plaintiff without accepting his written statement in view of the ratio decided in the case of *Arjun Singh Vs. Mohindera Kumar and others*, reported in AIR 1964 SCC 993. Thus, I find no infirmity in the impugned order.

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

(K.R. Mohapatra)
Judge



s.s.satapathy