

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1090 OF 2022

Soudamini Routray ***Petitioner***

Mr. Hrudananda Mohapatra, Advocate

-versus-

Giridhari Prusty and another ***Opp. Parties***

Mr. Budhiram Das, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

24.11.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 21st October, 2022 (Annexure-4) passed by learned Senior Civil Judge, Puri in C.S. No.447 of 2021, whereby an application filed by her under Order IX Rule 7 C.P.C. has been rejected.
 3. Mr. Mohapatra, learned counsel for the Petitioner submits that the Defendant No.1 is the Petitioner in this CMP. The suit has been filed for specific performance of contract. It is alleged in the plaint that the Defendant No.1-Petitioner has executed the agreement for sale of the suit land in favour of Plaintiff. Thus, the Defendant No.1-Petitioner has a vital role in adjudication of the suit. The Defendant No.1-Petitioner was set *ex parte* relying upon an endorsement made by the Postal Department to the effect that she refused to receive the summons. He further submits that the Defendant No.1-

Petitioner was at the relevant time admitted in Hospital and was not available at the address. In support of her case, the Petitioner has also annexed certain documents to the CMP. In that view of the matter, Mr. Mohapatra, learned counsel submits that the Petitioner should be given an opportunity of hearing to establish her case to the effect that no summons was served on her by leading evidence in the matter. Learned trial Court without affording any opportunity rejected the petition filed under Order IX Rule 7 C.P.C. by the Petitioner.

4. Mr. Das, learned counsel for the Plaintiff-Opposite Party No.1 submits that postal endorsement clearly discloses that the Defendant No.1 refused to accept the summons. Further, no document with regard to her medical treatment was filed before learned trial Court at the time of adjudication of the petition under Order IX Rule 7 C.P.C. Since the evidence in the suit has already commenced, the Defendant No.1-Petitioner cannot be relegated to the position prior to the date of hearing, even if *ex parte* order is set aside in view of the ratio decided in the case of **Arjun Singh –v- Mohindra Kumar and others**, reported in AIR 1964 SC 993. He, therefore, prays for dismissal of CMP.

5. On perusal of the impugned order under Annexure-4, it appears that the Petitioner has not led any evidence with regard to non-service of summons on her. Since the Petitioner is deprived of a vital right to contest the suit, further opportunity should be given to her to adduce evidence in support of her case.

6. Accordingly, the impugned order under Annexure-4 is set aside and the matter is remitted back to the learned trial

Court for fresh consideration of the petition filed under Order IX Rule 7 C.P.C. giving opportunity of hearing to the parties concerned.

7. With the aforesaid observation and direction, this CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks

