

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1098 OF 2022

Binodini Bhue and others* *Petitioners

Mr. Nirod Kumar Sahu, Advocate along
with Mr. Soumya Mishra, Advocate

-versus-

Suresh Kumar Agarwal and others* *Opp. Parties

Mr. Bibekananda Bhuyan, Advocate
(For Opp. Party No.1)

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER

13.12.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. Mr. Bibekananda Bhuyan, learned counsel enters appearance on behalf of Opposite Party No.1 by filing Vakalatnama in Court today after obtaining consent from previous learned counsel appearing for Opposite Party No.1, which is taken on record.
3. The Petitioners in this CMP seek to assail the order dated 11th October, 2022 (Annexure-32 series) passed by learned Senior Civil Judge, Bargarh in C.S. No.62 of 2009, whereby an application for amendment of the plaint has been allowed.
4. Lengthy arguments have been made by learned counsel for the parties. The essence of arguments made by Mr. Sahu, learned counsel for the Petitioners is that the Petitioners were

not given any opportunity of hearing to the petition filed by the Plaintiff under Order VI Rule 17 C.P.C. On 22nd January, 2020, to which date the suit was posted, their counsel was prevented to participate in the proceeding of the suit. On previous occasions also, their counsel was prevented from appearing in the Court for which the Petitioners had moved this Court in TRP(C) No.381 of 2022 and considering their submission, the suit was transferred to the court of learned Civil Judge (Senior Division), Rourkela before whom it is pending for adjudication.

5. It is also submitted that due to non-participation of their counsel in the proceeding, they were set *ex parte* on 11th October, 2022 and on the very same day, though the Petitioners were personally present in Court and prayed to participate in C.S. No. 62 of 2009 as well as I.A. No. 2 of 2020 filed under Order XXXIX Rules 1 and 2 C.P.C., but learned trial Court did not pass any order on the same and at the same time, allowed the application under Order VI Rule 17 C.P.C. Thus, the Petitioners were not given any opportunity of hearing in the petition under Order VI Rule 17 C.P.C. Hence, Mr. Sahu, learned counsel for the Petitioners prays for setting aside the impugned order and to remit the matter back to the learned trial Court for fresh adjudication of the petition under Order VI Rule 17 C.P.C. filed by the Plaintiff.

6. Mr. Bhuyan, learned counsel for the Plaintiff-Opposite Party No.1 vehemently objects to the same by filing the order sheet of the suit and submits that the Petitioners were given

ample opportunity from 2020 till 2022 to file objection to the petition under Order VI Rule 17 C.P.C. Vide order dated 13th April, 2022, the Petitioners were given last chance to file objection to the petition under Order VI Rule 17 C.P.C., but they failed to do so and on the date of hearing of the petition under Order VI Rule 17 C.P.C., they did not appear for which they were set ex parte. Unless the order setting the Petitioners ex parte is set aside, they cannot possibly maintain the CMP challenging the veracity of the impugned order.

7. Mr. Mishra, learned counsel for the Petitioners, however, seriously objects to the same and submits that on 11th October, 2022, the matter was not posted for hearing of the petition under Order VI Rule 17 C.P.C.

8. In view of the rival contentions of the parties, this Court feels that the matter requires consideration referring to the records of C.S. No.62 of 2009. In that view of the matter, this Court disposes of this CMP with an observation that the Petitioners, if so advised, may file an application to set aside the order dated 11th October, 2022 setting them ex parte and in that event, the same shall be considered on its own merit, giving opportunity of hearing to the parties concerned. In the event such an application is allowed, the plea taken by learned counsel for the Petitioners to assail the veracity of the impugned order would arise.

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

(K.R. Mohapatra)
Judge