

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1101 OF 2022

Sana Bag

....

Petitioner

Mr. Saugat Dash, Advocate

-versus-

Rohita Bagarty and another

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

09.12.2022

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 July, 2022 (Annexure-5) passed by learned Civil Judge (Senior Division), Titilagarh in Civil Suit No.90 of 2013, whereby an application filed by the Petitioner to adduce secondary evidence has been rejected.
 3. It is submitted by Mr. Dash, learned counsel that the case of the Petitioner hinges on a promissory note executed by the Plaintiff-Petitioner in favour of the Defendants. The original copy of the said promissory is available with Defendant No.1. But, in spite of the direction of learned trial Court dated 22nd July, 2016, Defendant No.1 did not produce the same. Thus, the Plaintiff filed an application to admit the copy of such promissory note as secondary evidence by producing foundational evidence to that effect. Learned trial Court taking into consideration that the suit is at the stage of argument and the Plaintiff did not avail such opportunity at the time when he was

examining his witness, rejected such application. Hence, this CMP has been filed.

4. Mr. Dash, learned counsel for the Petitioner submits that, in fact, the Petitioner did not avail such opportunity, but the promissory note is a relevant document for just adjudication of the suit. Hence, the Plaintiff may be permitted to produce the copy of the promissory note to be admitted as a secondary evidence for effective adjudication of the suit. Learned trial Court failed to appreciate the relevance of such document while dismissing the petition on sheer technicality. As such, the impugned order under Annexure-5 is not sustainable.

5. Taking into consideration the submission made by learned counsel for the Petitioner, it is clear that the Plaintiff-Petitioner did not make any endeavour at the stage of adducing evidence to admit the promissory note in evidence. The Plaintiff also did not make any endeavour to confront the said document to the witness of the Defendants. Thus, at the stage of argument of the suit, if such an opportunity is afforded, it will certainly amount to abuse the process of the Court and will prejudice the Defendants. Thus, learned trial Court has committed no error in rejecting such petition.

6. As such, this CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge