

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 1105 OF 2022

Santosh Sasmal *Petitioner*
Mr. Sukanta Kumar Dalai, Advocate
-versus-
Paradeep Port Trust *Opp. Party*

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
25.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 27th June, 2022 (Annexure-1) passed by learned Senior Civil Judge, Kujang in C.S. (III) No.117 of 2015, whereby an application filed by the Petitioner (Defendant therein) under Order XI Rule 14 C.P.C. has been rejected.
3. Mr. Dalai, learned counsel submits that the Petitioner is the Defendant in the aforesaid suit, which has been filed by the Opposite Party for a money decree of Rs.1,83,00,994.60/-. The Defendant-Petitioner has already filed his written statement along with the counter claim for recovery of Rs.2,11,94,482.00/. In order to establish the case of the Defendant-Petitioner, he has relied upon some communications made by the Plaintiff to the Defendant-Petitioner, which is described in detail in the petition under Order XI Rule 14 C.P.C. In order to prove the same, the originals are required to be produced by the Plaintiff, as it is the custodian of those documents. The Defendant-Petitioner had also filed a writ petition before this Court, in which those

communicated copies have been filed. Although the Petitioner has already obtained certified copies of those documents and has produced the same before learned trial Court, but in order to prove his case, the originals are required. Hence, the aforesaid application was filed. Learned trial Court in a cryptic order holding that the burden is on the Defendant to prove his own case, dismissed the application. Hence, this CMP has been filed.

4. In view of the submission made by learned counsel for the Petitioner, it is apparent that the Petitioner is in possession of the certified copies of the documents, he wants to call for from the Plaintiff. As submitted, P.W.1 has already been examined in the matter. Apparently no endeavour has yet been made to admit the certified copies into evidence by giving proper explanation. Since the writ petition has already been disposed of, the Petitioner can take back the communicated copies and take steps for production of those documents in the suit. In that view of the matter, the order Under XI Rule 14 C.P.C. appears to be premature.

5. Accordingly, the CMP is disposed of with an observation that the Petitioner, if so advised, may take step for admission of the certified copies in evidence. He can also produce the communicated copies of the documents by receiving back the same filed in the writ petition. Subsequently, if at all the originals are necessary to prove those documents, step in accordance with law may be taken.

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

(K.R. Mohapatra)
Judge