

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1113 OF 2022

Prabhat Narayan Tripathy ***Petitioner***
Mr. Maheswar Mohanty, Advocate
-versus-

State of Odisha ***Opp. Party***
Mr. B. Panigrahi,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
23.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 5th March, 2022 (Annexure-8) passed by learned Senior Civil Judge, Bargarh in C.S. No.07 of 2015, whereby an application filed by the Plaintiff-Petitioner under Order VI Rule 17 C.P.C. has been rejected.
3. Mr. Mohanty, learned counsel for the Petitioner submits that the Petitioner as Plaintiff filed a suit for declaration of right, title and interest as well as for consequential relief. At the time of preparation for trial of the suit, the Plaintiff-Petitioner came to learn that a vital pleading with regard to issuance of notice under Section 80(1) C.P.C. and receipt thereof have not been pleaded in the plaint. Hence, an application was filed for amendment of the plaint stating it to be a typographical and inadvertent mistake on the part of the Plaintiff. It is also submitted that notice under Section 80(1) C.P.C. and receipt

thereof have already been filed by the Petitioner along with the plaint, on consideration of which the suit was admitted. Thus, the amendment is formal in nature and will not change the nature and character of the suit. Learned trial Court observing that the suit is of the year, 2015 and allowing the amendment will only linger the suit without any fruitful purpose, dismissed the application.

4. Mr. Mohanty, learned counsel further submits that the amendment, if not allowed, will certainly prejudice the Plaintiff as the suit will fail on technical issue without going into the merits of the case. On the other hand, prejudice, if any, to the Defendant, who is none other than the State of Odisha represented through the Collector, can be compensated with due cost. He, therefore, prays for setting aside the impugned order and to issue direction for allowing the amendment sought for.

5. Mr. Panigrahi, learned Additional Standing Counsel submits that the Plaintiff-Petitioner is all throughout negligent in pursuing the suit. Admittedly, necessary pleading with regard to issuance and service of notice under Section 80(1) C.P.C. was not taken in the plaint. Further, the Petitioner had earlier filed an application for amendment. But, in spite of availability of opportunity, no such amendment was sought for. Thus, amendment sought for is nothing but an attempt to linger the suit and to harass the Defendant. He, therefore, submits that learned trial Court has committed no error in dismissing the petition for amendment.

6. Taking into consideration the rival contentions of the parties and on perusal of the record, this Court finds that the amendment is in respect of introduction of pleading with regard to issuance and service of notice under Section 80(1) C.P.C. on the Defendant. Although documents to that effect have already been filed and on consideration of the same, the suit has been admitted, no such pleading was taken in the plaint. This might be an inadvertent one. Such a pleading is necessary in the plaint for adjudication of the suit on merit. The Court should always make an endeavour for disposal of the suit on merit. Dismissal of the suit on technicality leads to multiplicity of litigation and complications.

7. The amendment, if allowed, will not change the nature and character of the suit and will only facilitate proper adjudication of the suit. As admitted by learned counsel for the parties, trial of the suit has not yet commenced. Thus, there was no legal impediment on the part of learned trial Court for allowing the amendment.

8. Accordingly, this Court sets aside the order dated 5th March, 2022 (Annexure-8) passed by learned Senior Civil Judge, Bargarh in C.S. No.07 of 2015 and allows the amendment sought for. Consolidated plaint incorporating the amendment shall be filed within a period of seven days hence serving copy thereof on the Defendant. The Defendant, if so advised, may file its additional written statement at an early date. It is made clear that consolidated plaint incorporating the amendment shall be accepted subject to payment of cost of

Rs.1500/- (Rupees fifteen thousand only) to the District Legal Services Authority and receipt thereof shall be filed along with the consolidated plaint.

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

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

(K.R. Mohapatra)
Judge

bks

