

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1140 OF 2022

Nahirun Nisha

....

Petitioner

Mr. Kalinga Keshari Mohapatra, Advocate

-versus-

Abdul Kasim Jalal Udin and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

24.11.2022

Order No.

- 01.
1. This matter is taken up through hybrid mode.
 2. This CMP has been filed assailing the order dated 20th October, 2022 (Annexure-1) passed by learned Civil Judge (Senior Division), Pipili in I.A. No.46 of 2022 (arising out of C.S. No.75 of 2022), whereby an application of the Petitioner to grant an *ad interim* order of injunction before entertaining an application under Order XXXIX Rules 1 and 2 C.P.C., has been rejected.
 3. Mr. Mohapatra, learned counsel for the Petitioner submits that along with the plaint, the Petitioner filed I.A. No.46 of 2022 under Order XXXIX Rules 1 and 2 C.P.C.. He also filed an application under Order XXXIX Rule 3 C.P.C. to entertain the prayer for *ad interim* order of injunction by dispensing with service of notice on the Opposite Parties. The said application was rejected. Assailing the same, the Petitioner had preferred CMP No.1076 of 2022, which was disposed of vide order dated 10th November, 2022 without interfering with the order of

rejection of application under Order XXXIX Rule 3 C.P.C. Thereafter, the Petitioner filed an application to grant an *ad interim* order of injunction stating that the Opposite Parties are obstructing the access to his residential house. Learned trial Court erroneously holding that after rejection of an application under Order XXXIX Rule 3 C.P.C., an application for grant of injunction is not maintainable, rejected the same. Hence, this CMP has been filed.

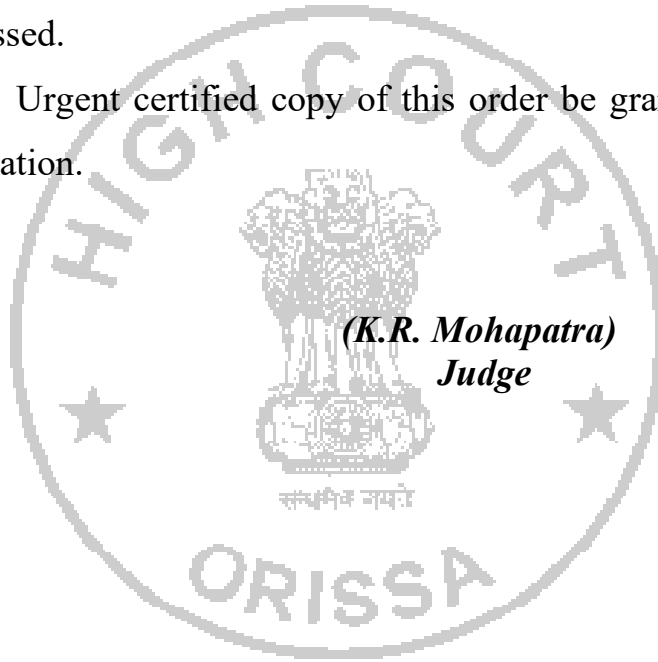
4. Mr. Mohanty, learned counsel for the Petitioner relying upon a decision in the case of ***Tanusree Basu and others –v- Ishani Prasad Basu***, reported in AIR 2008 SC 1909 submits that an application under Section 151 C.P.C. can be entertained after rejection of an application under Order XXXIX Rule 3 C.P.C., if the Petitioner makes out a case that the relief sought for in the petition under Section 151 C.P.C. cannot be granted in an application under Order XXXIX Rules 1 and 2 C.P.C.. He, therefore, prays for setting aside the impugned order under Annexure-1 and to pass an *ad interim* order of injunction restraining the Opposite Parties from creating any disturbance in access to his residential house.

5. Considering the submission made by learned counsel for the Petitioner, it is manifest that an application under Order XXXIX Rule 3 C.P.C. has already passed rejected. No case is made out by the Petitioner, which would reveal that the relief sought for in the petition for *ad interim* order of injunction cannot be granted in the petition under Order XXXIX Rules 1 and 2 C.P.C. Thus, the case law cited by learned counsel for the Petitioner is of no assistance to his case. Since learned trial

Court felt that there was no urgency in the matter, it rejected the petition under Order XXXIX Rule 3 C.P.C. and directed to take out notice on the Opposite Parties by Registered Post. Thus, the application under Order XXXIX Rules 1 and 2 C.P.C. can only be considered after giving opportunity of hearing to the Opposite Parties. Hence, this Court is of the considered opinion that learned trial Court has committed no error in passing the impugned order under Annexure-1.

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

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



ms