

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.672 of 2021

Suryaprava Daily Newspaper & Ors.

Petitioner(s)

Mr. T. Roy,
Advocate

-versus-

***National Aluminium Company Ltd.
& Anr.***

Opposite Party(s)

CORAM:

JUSTICE BISWANATH RATH

ORDER

11.01.2022

Order No.

03.

1. This matter is taken up by video conferencing mode.
2. For the concurrent finding of fact involving the injunction issue this Court is of the consistent view that there is no room for interfering in such orders. However, considering the request of Mr. Roy, learned counsel for the Petitioner that continuance of the injunction on the existence of consideration of an application under Order 7 rule 11 of C.P.C challenging the maintainability of the suit itself, is causing damage to the Petitioner everyday. It is keeping this in view, this Court observes, in the event the Petitioner had already an application under Order 7 Rule 11 of C.P.C, nothing prevented the Petitioner to approach the trial court to first take up application under order 7 rule 11 of C.P.C, thereafter to move the injunction application. Unfortunately, there is no such attempt and the injunction application is allowed to be considered and decided.
3. In the circumstance, while declining to interfere in the confirming order involving Order 39 rule 1 & 2 of C.P.C, this Court

directs, in the event there is already an application under Order 7 rule 11 of C.P.C going to the root of the maintainability of the suit, the trial court is duty bound to decide such issue first before proceeding to decide any other issue involving such dispute. In the process this Court while dismissing the Civil Miscellaneous Petition, directs the trial court to decide the application under Order 7 rule 11 of C.P.C at the instance of the Petitioner involving the Opposite Parties at least within a period of one month from the date of communication of an authenticated copy of this order by the Petitioner and if necessary conducting hearing through video conferencing mode.

4. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide memo Nos.514 & 515 dated 7th January, 2022.

(Biswanath Rath)
Judge