

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1154 of 2022

Mahendra Kumar Panda ***Petitioner***
Mr. sankaracharya Choudhury, Advocate
-versus-

Rajendra Kumar Panda ***Opp. Party***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
12.12.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 25th February, 2016 (Annexure-2) by which he was set ex-parte so also the order dated 22nd June, 2022 passed on the petition filed for setting aside the order dated 25th February, 2016. Petitioner also challenges the order dated 10th October, 2022 passed on an application filed under Order IX Rule-7 CPC, which has been rejected.
3. Mr. Choudhury, learned counsel for the Petitioner submits that due to acute poverty and ignorance of law, the Petitioner, who is Defendant No.5 in the suit before learned trial Court could not appear on the date of hearing for which he was set ex-parte on 25th February, 2016. Accordingly, an application dated 2nd May, 2022 to set aside order dated 25th February, 2016 was filed. The said application was rejected vide order dated 22nd June, 2022. Subsequently, another application dated 20th September, 2022 under Order IX Rule 7 CPC was filed to set aside the said orders dated 25th February,

2016 and 22nd June, 2022, which was also rejected. Hence, this CMP has been filed.

3.1 It is his submission due to acute poverty the Petitioner could not afford to contest the suit, for which he engaged a counsel through TLSC, who filed an application to set aside the aforesaid ex-parte order. Learned trial Court, without realizing the real difficulty of the Petitioner, passed the impugned orders.

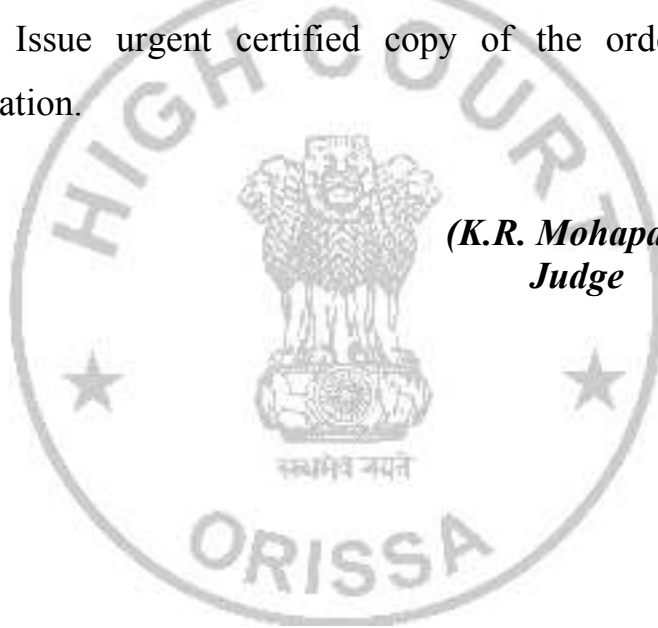
4. Upon hearing learned counsel for the Petitioner and on perusal of record, it appears that vide order dated 22nd June, 2016, Petitioner/Defendant No.5 was set ex-parte. After lapse of six years, he filed an application on 2nd May, 2022 to set aside the order dated 25th February, 2016. Learned trial Court holding the Petitioner could not satisfy the Court with regard to his non-appearance on the date of hearing, rejected his application. Without assailing the said order, the Petitioner again filed an application on 20th September, 2022 under Order IX Rule 7 CPC to set aside the orders dated 25th February, 2016 and 22nd June, 2022. The said application has been rejected vide order dated 10th October, 2022. It further appears that the Petitioner has not explained a sufficient cause for his non-appearance on 25th February, 2016, when the suit was called for hearing. No material in support of his case was also filed. Hence, learned trial Court has committed no error in rejecting the petitions dated 20th September, 2022 as well as 2nd May, 2022. Further, without assailing the said order before the higher forum, Petitioner through the Advocate engaged by TLSC, Salipur, filed another application under Order IX Rule 7 CPC. When the order dated 22nd June, 2022 was staring at the Petitioner filing of the petition under Order IX Rule 7 CPC

without assailing the previous order in higher forum, is not maintainable. Therefore, learned trial Court has committed no error in rejecting such application. As the Petitioner has not shown sufficient cause, this Court finds no reason to set aside the order setting him ex-parte, i.e., order dated 25th February, 2016.

5. In that view of the matter, the CMP is disposed of with an observation that Petitioner/Defendant No.5, if so advised, may participate in the hearing of the suit by cross-examining the witness without propounding his own case.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy