

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 1176 OF 2022

Jitendra Nath Rath ***Petitioner***
Mr. Banshidhar Baug, Advocate

-versus-

Smt. Bandinipriya Rath @ Gitarani ***Opp. Parties***
Kar and others

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
20.12.2022

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks for a direction for early disposal of I.A. No.1 of 2019 (arising out of F.A.O. No.91 of 2019) pending before learned Additional District Judge, Bhubaneswar.
3. It is submitted by Mr. Baug, learned counsel for the Petitioner that exercising the power under Order XXXIX Rule 3 C.P.C., learned appellate Court has passed an *ad interim ex parte* order of injunction on 1st October, 2019 and directed for issuance of notice to the Respondents. In the meantime, the Respondent No.1-Petitioner has already entered appearance. But, notice on the Opposite Party Nos.2 to 5 is not sufficient. Referring to the order dated 25th March, 2021, Mr. Baug, learned counsel for the Petitioner submits that the Opposite Party Nos.1 and 2 were directed to take out notice on rest of the Respondents. But, till date, the order has not been complied with and an *ex parte ad interim* order of injunction is

continuing. Due to pendency of the I.A., the Petitioner is highly prejudiced.

4. Mr. Baug, learned counsel for the Petitioner refers to the provision under Order XLI Rule 14 C.P.C. read with Order IX Rule 5 C.P.C. and submits that the procedure laid down under Order IX C.P.C. with regard to service of summons is applicable to an appeal filed under Section 96 C.P.C.. Thus, the appeal should have been dismissed against those Respondents for non-compliance of the Court's direction. However, in spite of several requests of the Petitioner, learned appellate Court is neither taking any coercive action against the Opposite Party Nos.1 and 2 nor is disposing of the I.A. on merit. Hence, this CMP has been filed for the aforesaid relief.

5. Taking into consideration the submission made by learned counsel for the Petitioner, this Court finds that I.A. No.1 of 2019 has been filed under Order XXXIX Rules 1 and 2 C.P.C.. An *ex parte ad interim* order of injunction has been passed resorting to the provision under Order XXXIX Rule 3 C.P.C.. Thus, the mandate under Rule 3-A C.P.C. has to be complied with. Since it is an application under Order XXXIX Rules 1 and 2 C.P.C., learned appellate Court should make an endeavour for its early disposal. It is also appears that the Appellants-Opposite Party Nos.1 and 2 are not taking any step for service of summons on Respondent Nos.2 to 5. Thus, learned appellate Court should take coercive measure against the Appellants.

6. In view of the discussion made above, this Court disposes of the CMP with a direction that learned appellate

Court shall make an endeavour either to compel the Appellants- Opposite Party Nos.1 and 2 to serve notice on the rest of the Respondents or to adopt the procedure laid down under the Code of Civil Procedure to see that the petition under Order XXXIX Rules 1 and 2 C.P.C. is heard at an early date.

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

(K.R. Mohapatra)
Judge

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