

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.707 OF 2021

Pradipta Kumar Sahoo

....

Petitioner

Mr.S.Pattanayak, Adv.

-versus-

Basanta Kumar Chinara

....

Opposite Party(s)

Mr.B.Mohanty, Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**Order
No.**

**ORDER
30.3.2022**

3. 1. Heard learned counsel for the Parties.
2. This matter involves rejection of an Application under Order 9 Rule 7 of C.P.C. read with Section 151 of C.P.C. The Petitioner, the Defendant in court below, remaining absent on the date of hearing was set ex parte by order of the trial court dated 22.8.2019. Undisputedly, the Application under Order 9 Rule 7 of C.P.C. was filed on 28.9.2020.
3. Taking this Court to the stage of the suit and further the ex parte order preventing the Petitioner to have contest in disposal of the suit, learned counsel for the Petitioner claimed, there is no proper consideration of such Application by the trial court and requires to be interfered with.

4. Learned counsel for the O.P., on the other hand, in his opposition to such move contended that bare looking to the Application for setting aside the ex parte order, there appears, there was absolutely no proper pleading nor even specific prayer in allowing such Application. In the Process, learned counsel for the O.P. attempted to justify the impugned order.

5. Considering the rival contentions of the Parties, this Court finds, disposal of the suit without opportunity of contest to the Defendant will not benefit either of the Parties. For the settled position of law, allowing of the suit ex parte should be avoided. The nature of the suit involved required contested disposal to avoid multiplicity of litigations and complications otherwise. It is however looking to the stage of the suit presently, this Court finds, there has been closure of evidence from the side of the Plaintiff. Considering that there is already commencement of evidence from the side of the Plaintiff, this Court finds, there may be some inconvenience thereby to the Plaintiff. It is keeping all the above in view, this Court finds, in the interest of justice the Order 9 Rule 7 of C.P.C. Application should have been allowed but however on imposition of cost required to be paid to compensate the time loss to the Plaintiff.

6. In the process, interfering with the impugned order, this Court allowing the Application under Order 9 Rule 7 of C.P.C.

directs restoration of the suit so far it relates to the Defendant. In the event there is already examination of some of the witnesses for re-opening of the suit to provide opportunity of participation of the Defendant, on a memo being filed for recalling such witnesses, the trial court shall do well in recalling the witnesses already deposed for cross-examination purpose. To mitigate the injury on account of time loss and the suffering of the Plaintiff for no fault of him, this Court imposes cost of Rs.3,000/- (rupees three thousand) to be paid to the Plaintiff by the Defendant within ten days along with his appearance in the court below on 8th April, 2022. Considering the suit is pending since 2016, for involvement of miscellaneous proceeding but for no fault of the Plaintiff, this Court directs the trial court to conclude the trial proceeding involving C.S. No.144 of 2016 at least within a period of nine months from the date of communication of this order.

7. The CMP stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout