

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.725 of 2021

Subhadra Mukhi

.... ***Petitioner***
Mr.Mithun Das, Advocate

-versus-

Lata Mukhi @ Bewa and others

.... ***Opp. Parties***
Mr.D.Mund,A.G.A,

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

19.01.2022

Order No.

1. This matter is taken up through Video Conferencing mode.
2. Heard Mr.Das, learned counsel for the Petitioner and Mr.D.Mund, learned Additional Government Advocate.
3. The present CMP application has been filed challenging the order dated 7th October, 2021 passed by the learned Civil Judge (Senior Division), Keonjhar whereby due to non-compliance of the mandatory requirement under section 80 of the Code of Civil Procedure, the plaint has been returned to the Plaintiff for presentation of the same before the Court after complying with the requirements of Section 80(1) of the Code of Civil Procedure.
4. Mr.Das, learned counsel for the Petitioner submits that he does not seek any relief against defendant No.3-Government at this stage without complying with Section 80(1) of the Code of Civil Procedure. However, he further submits that the suit is against defendant Nos.1 & 2, who are private parties and the suit against them is maintainable and the same can proceed in accordance with law. In such view of the matter, he submits that the suit may be

allowed to continue as against defendant Nos. 1 and 2 and so far as the suit against defendant No.3 is concerned, the same be kept in abeyance till compliance of Section 80 CPC notice, which the petitioner undertakes to comply forthwith.

5. Mr.Mund, learned Additional Government Advocate appearing for Opposite Party No.3 i.e. defendant No.3 in the suit submits that in the prayer portion of the plaint, the Plaintiff has sought for relief of declaration of right, title and interest against all the defendants including the defendant No.3., to which the learned counsel for the Petitioner submits that he shall not insist on such prayer before compliance of the provisions of Section 80(1) of the Code of Civil Procedure as undertaken by him.

6. Having heard learned counsel for the parties, this Court is of the considered view that the learned Court below should have afforded an opportunity to the Petitioner for compliance of the requirement under section 80(1) of the Code of Civil Procedure. Further the suit as against defendant Nos. 1 and 2 can easily proceed in view of the undertaking given by the Plaintiff that at this juncture he does not seek any relief whatsoever against defendant No.3 before compliance of Section 80 of the Code of Civil Procedure. In such view of the matter, the impugned order is modified to the extent that the same will remain in force as against defendant No.3. So far as defendant Nos. 1 & 2 are concerned, the suit may proceed subject to the petitioner furnishing an undertaking before the learned court below that he shall not seek any relief against defendant No.3 without complying the mandatory requirement of Section 80(1) of the Code of Civil Procedure.

7. With the aforesaid observation the CMP stands disposed of. However, since the CMP application is disposed of without issuing notice to Opposite Party Nos. 1 and 2, it is open for defendant Nos., 1

and 2, who are opposite Party Nos.1 & 2 to seek for modification/clarification/variation of the present order in the event they feel aggrieved by this order.

8. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out 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, modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

RKS

(*A.K. Mohapatra*)
Judge

