

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.802 of 2021

***M/s. B. Engineers and Builders (P.)
Ltd.***

Petitioner(s)

Mr. B. Baug,
Advocate

-versus-

***Orissa Construction Corporation
Ltd.***

Opposite Party(s)

Mr. D. Mohapatra,
Advocate with
Mr. R. Mishra,
Mr. P. Pradhan,
Advocates

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
07.03.2022**

Order No.

04. 1. This Civil Miscellaneous Petition involves a challenge to the impugned order at Annexure-5 being passed by the trial Court in considering an application at Annexure-3 and also taking into consideration the objection at Annexure-4.
2. Taking this Court to the copy of petition, list of documents at page nos.31 & 32 of the brief and also referring to the copy of the plaint available here, Mr. Baug, learned counsel for the Petitioner raised serious objection with regard to the availability of plea relating to the documents in question, further referring to the list of documents at page 31 of the brief Mr. Baug, learned counsel for the

Petitioner also urged that had there been pleadings involving such documents in the plaint, there would have been occasion for the defendant to file written statement attending to the same and secondly there would have been a scope for confronting such document in course of evidence. Mr. Baug, learned counsel for Petitioner also alleged that such application is filed much after commencement of trial. Taking this Court to the plea in the petition at Annexure-3 considered by the trial court, Mr. Baug, learned counsel for Petitioner alleged that there is no head and tail in the application at least to satisfy the requirement of such documents and further since the suit was of the year 1995 and for the attempt to bring documents by way of Exhibits was made in November, 2021, there should have been explanation on due diligence for bringing such documents after long lapse of time. It is, in this background of the matter, Mr. Baug, learned counsel for Petitioner requests this Court for interfering in the impugned order and setting aside the same.

3. Opposing the submission of Mr. Baug, learned counsel for the Petitioner Mr. Mohapatra, appearing for the Opposite Party taking this Court to a bunch of documents filed for the first time here by way of memo, attempted to satisfy the Court that not only there was availability of pleadings relating to such document, but there was also schedule involving the plaint in disclosing existence of such documents, Mr. Mohapatra, learned counsel of the Opposite Party also brought to the notice of this Court that there has been filing of additional written statement involving such documents and thus contended that taking into account the whole documents

available and reading together with the pleadings available, the trial court has rightly allowed the application and there is no scope for interfering in such orders.

4. Considering the rival contentions of the parties, particularly keeping in view the allegation of Mr. Baug, learned counsel for Petitioner, this Court looking to the application involved in the impugned order at Annexure-3 finds, the application contains hardly eight sentences and there is no disclosure of pleading available to support such claim particularly involving the voluminous documents. Though Mr. Mohapatra, learned counsel for Opposite Party through pleadings attempted to satisfy his case, but this Court on perusal of Annexure-3 and the impugned order herein, does not find any discussion on the same by the trial court and further for the late bringing of documents as Exhibits, the plaintiffs also required to satisfy due diligence in their attempt in the event there was no pleading already supporting such documents. From the whole background of the case, this Court finds, there is no appropriate consideration of such a serious contingency by the trial court.

5. This Court, therefore, while interfering with the impugned order, sets aside the same. Keeping in view the settled position of law to make endeavor to attempt to all such requirements in the trial proceeding, however permits the Opposite Party to bring a detailed application again on such request within two weeks hence and objection, if any, be filed one week thereafter and the trial court shall consider the application afresh and dispose such application in accordance with law within six weeks hence. Both the parties are directed to appear before the trial court on 21st March, 2022

alongwith appropriate petitions. It is also made clear that observation made hereinabove shall not have any effect in ultimate adjudication of the suit and also the impugned order shall not affect the fresh hearing of the matter.

5. With the aforesaid direction the C.M.P. stands disposed of.

(Biswanath Rath)
Judge

Ayas Kanta Jena

