IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1357 OF 2022

Narayan Barik	....	***Petitioner***
		Mr. Manoranjan Mishra, Advocate
	-versus-	
Hrushikesh Barik and others	....	***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **23.12.2022**

01. 1. This matter is taken up through hybrid mode.

2. The CMP has been filed assailing the order dated 17th December, 2022 (Annexure-1) passed by learned District Judge, Kendrapara in F.A.O. No.36 of 2022, whereby dismissing the appeal, he confirmed the order dated 6th May, 2022 (Annexure-2) passed by learned Senior Civil Judge, Pattamundai in I.A. No.204 of 2021 (arising out of C.S. No.201 of 2021) by which an application under Order XXXIX Rules 1 and 2 C.P.C. filed by the present Petitioner has been rejected.

3. Mr. Mishra, learned counsel for the Petitioner submits that C.S. No.201 of 2021 has been filed for permanent injunction restraining the Defendants from receiving the maturity amount of the L.I.C. Polices under Schedule-A of the plaint as well as for ancillary relief. The dispute relates to the maturity amount of L.I.C. Policies, more fully, described in Schedule-A of the plaint. It is his submission that the financial condition of the family of the Petitioner was not good, for which during life time of his father, the Petitioner went to Kuwait and worked there as a plumber. The Petitioner was earning a handsome amount and

used to send the same to his family at Pattamundai. After the death of his father, the Petitioner came to his village and learnt that the said amount has been invested by the Defendant No.1 (brother of the Petitioner) and Defendant No.2 (Wife of Defendant No.1) in their names. They have also made investment in the policies as per Schedule-A of the plaint. Hence, the Petitioner filed a suit for the aforesaid relief and also filed an application in I.A. No.204 of 2021 under Order XXXIX Rules 1 and 2 C.P.C. to restrain the Defendant Nos.1 and 2 from receiving the amount in respect of the aforesaid L.I.C. Policies. Learned trial Court dismissing the application stating that since the Policies stand in the name of Defendant Nos.1 and 2, they cannot be restrained from receiving the money.

4. Learned appellate Court also reiterated the same and held that the Petitioner does not have a strong *prima facie* case and the allegation made by the Petitioner requires adjudication. If after adjudication, the Petitioner becomes entitle to the amount, then the Petitioner can recover the money. As such, it is held that the Petitioner will not suffer any irreparable loss, if the injunction is not granted.

5. Mr. Mishra, learned counsel for the Petitioner submits that the observation made by learned appellate Court is not sustainable, in as much as, it will be difficult on the part of the Petitioner to recover the money, in the event, he succeeds in the suit. Further, there will be multiplicity of litigation for recovery of the money. If by maintaining an order of *status quo*, a direction may be made to dispose of suit at an early date, the same will be in the best interest of justice. He further submits that during pendency of the application before learned trial Court, as an

interim measure, *status quo* was directed to be maintained between the parties with regard release of the amount in respect of L.I.C. Policies under Schedule-A of the plaint. He, therefore, submits that the impugned order under Annexure-1 may be set aside and the parties should be directed to maintain *status quo* with regard to release of money in respect of L.I.C. Policies till disposal of the suit.

6. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that admittedly the policies were purchased by the Defendant Nos.1 and 2. Whether the policies were purchased from their own income or from the money allegedly sent by the Petitioner working at Kuwait, is the matter of adjudication in the suit itself. Since the policies stand in the name of Defendant Nos.1 and 2 and they are legally entitled to the benefit under the same. Hence, they should not be restrained from getting the benefit out of said policies. If an order of *status quo* is granted at this stage, it will not only cause prejudice to the Defendants Nos.1 and 2, but also lead to their irreparable loss, as the purpose for which the policies are purchased may be frustrated.

7. In that view of the matter, I find no infirmity in the impugned order either under Annexure-1 or under Annexure-2.

8. Accordingly, this CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

ms