

15.04.2024
Sl. No.28(DL)
srm

C.O. No. 2109 of 2022
Smt. Sabitri Santra & Anr.
Versus
Baneswar Jana & Ors.

Mr. Sukumar Ghosh,
Mrs. Moumita Ghosh

..... Petitioners.

Mr. Malyasree Maity
...for the Plaintiffs/Opposite Party Nos.1 to 3.

1. Despite service, none appears on behalf of the opposite party Nos.4 to 7. It appears that the Advocate-on-record in the learned trial court has also been served. Affidavit-of-service is taken on record.
2. A short point is involved as to whether the defendant Nos.3 and 4, petitioners herein, should be allowed to cross-examine the plaintiffs' witnesses as also the defendant Nos.1 and 2 (opposite party Nos 4 & 5).
3. On an allegation that the defendant Nos.1 and 2 had forged the signatures of the defendant Nos.3 and 4 in the written statement, a prayer was made to expunge the names of the petitioners from the written statement and for permission to file a separate written statement. Such prayer was allowed and the additional written statement

was filed. Hence, the need to cross-examine the plaintiffs and defendant Nos.1 and 2 arose.

4. By the order dated August 31, 2012, the learned Civil Judge (Senior Division), Tamluk, rejected the application filed by the defendant Nos.3 and 4. The court did not allow the cross-examination of the plaintiffs as also the defendant Nos.1 and 2, filed in connection with Title Suit No.1 of 2002. The said order was passed, *inter alia*, holding that the petitioners failed to get their application heard. Yet, the Court recorded that there was no merit in the application filed by the petitioners. The grounds as to why the learned court had arrived at such a finding have not been disclosed in the order. By a single line, the said application was rejected by the learned court, *inter alia*, holding that there was no merit in the application.
5. Subsequently, an application for recall of the said order dated August 31, 2012 was filed, which again, the learned court had rejected.
6. Both the orders have been challenged before this Court.
7. In the subsequent order dated June 13, 2022, the learned court records that the order dated August 31, 2012 was passed in the presence of the plaintiffs and the defendant Nos.1 and 2, but the defendant Nos.3 and 4, petitioners

herein, had not taken any steps on that day. The application was rejected on merit without any cost. Hence, there was no scope for recalling such order.

8. The fact remains that the written statement was filed jointly by the defendants Nos. 1,2,3 and 4. Thereafter, the defendant Nos.3 and 4(petitioners) filed an application praying for an order from the learned trial court to expunge their names from the written statement. The prayer was made on the ground that the written statement had been filed without their consent and by forging their signatures. The allegation was that the other defendants had taken advantage of the illiteracy of the petitioner. Such application was allowed by the learned court and the defendant Nos.3 and 4, i.e. the petitioners herein were allowed to file a separate additional written statement.
9. I find that there is substance in the contentions of the petitioners, who were allowed by the learned court to contest separately from the other defendants. Thus, once the learned court allowed the said defendants to contest the suit separately, they should have been given an opportunity to cross-examine the plaintiff's witnesses and the defence witnesses.

10. Under such circumstances, this Court is of the opinion that the order dated August 31, 2012 suffered from perversity.

11. In my opinion, the second order also suffers from perversity, inasmuch as, the learned court could not have rejected an application dated August 31, 2012 on merits when the subsequent order records that the application, which was filed by the defendant Nos.3 and 4, i.e. the petitioners herein, had not been moved at all by them. The learned court was confused. Under such circumstances, this court is of the opinion that this is a fit case where interference of this Court under Article 227 of the Constitution of India is necessary in order to prevent miscarriage of justice and in order to do complete justice.

12. Both the orders impugned dated August 31, 2012 and June 13, 2022 are set aside.

13. The learned court is directed to allow cross-examination by the petitioners upon recalling the PWs by fixing two consecutive dates. The cross-examination of the DWs shall also be permitted at the instance of the petitioners by fixing further two consecutive dates.

14. It is directed that the petitioners are to comply with this order and also the time frame to be fixed by the learned court. No adjournments shall be granted.
15. It is made clear that the entire process of the cross-examination in terms of the order of this Court should be over within a period of two months from date.
16. As the suit is of 2002, the learned court shall proceed with the suit expeditiously and dispose of the same within six months from the date of completion of the cross-examination as directed herein.
17. The revisional application is, thus, disposed of.
18. There shall be no order as to costs.
19. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)