

(2024) 07 OHC CK 0084
In the Orissa High Court
Case No : CMP No. 328 Of 2020

Annapurna Satpathy And Others

APPELLANT

Vs

Deba Dutta Ratha And Others

RESPONDENT

Date of Decision : 18-07-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17, Order 8 Rule 6C, Order 9 Rule 13

Citation : (2024) 07 OHC CK 0084

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : Sourav Suman Bhuyan, Amit Prasad Bose

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

I.A. No.308 of 2024

1. This matter is taken up through hybrid mode.
2. This I.A. has been filed for restoration of the CMP, which was disposed of on 4th May, 2022 granting liberty to the Petitioners to challenge the order dated 4th March, 2020 at Annexure-4 subject to the outcome of the proceeding under Order IX Rule 13 CPC.
3. Mr. Bhuyan, learned counsel for the Petitioners submits that CMP No.328 of 2020 was filed assailing the order dated 4th March, 2020 allowing an application filed by the Plaintiff-Opposite Party No.1 under Order VIII Rule 6-C CPC to exclude the counter claim filed by the Defendants-Petitioners. When CMP No.328 of 2020 was taken up for final disposal on 4th May, 2022, the suit had already been decreed ex parte and an application under Order IX Rule 13 CPC was pending for consideration. Thus, disposing of the CMP vide order dated 4th May, 2022, this Court granted the aforesaid liberty. In terms of the liberty granted, I.A. No.308 of 2024 has been filed for restoration of this CMP.

4. It is his submission that after the ex parte decree was set aside, the Defendant No.3-Petitioner filed an application for amendment of the written statement to introduce the counter claim, which was rejected on the ground that on previous occasion, an application for exclusion of counter claim was allowed. Assailing the said order, the Defendant Nos.1 to 3 including the Petitioner had filed the present CMP, which was disposed of without interfering with the said order but granting liberty to challenge the said order. The Petitioners had no intention to linger the proceeding or to avoid participating in the proceeding of the suit. Unless the Petitioner No.3 is permitted to introduce the counter claim by way of amendment of the written statement, which is permissible in law, she will suffer irreparable loss as the property in question situates beyond the local jurisdiction of the Court, in which the suit is pending at present.

5. Inadvertently, due to improper advice, a fresh application for amendment of the written statement was filed before learned trial Court without seeking relief as permitted in this CMP. Thus, for the mistake of learned counsel, Defendant No.3-Petitioner should not suffer. He, therefore, submits that interest of justice will be best served, if this CMP is restored to file and be heard on merit.

6. Mr. Bose, learned counsel for the Plaintiff-Opposite Party No.1 vehemently objects to the above. It is his submission that this CMP was disposed of on 4th May, 2022 granting liberty to the Petitioners to challenge the order at Annexure-4 subject to the outcome of Order IX Rule 13 CPC. This Court never granted any liberty to seek for restoration of the CMP. He further submits that the petition under Order IX Rule 13 CPC was allowed vide order dated 22nd September, 2023 and the application for restoration was filed on 18th March, 2024 without explaining the delay in filing the I.A. When the Petitioners have already filed another application for amendment of the written statement to introduce the counter claim and the same has already been dismissed, the present I.A is misconceived and is not maintainable. He, therefore, submits that the I.A. merits no consideration and is liable to be dismissed.

7. Taking note of the submissions made by learned counsel for the parties, this Court finds that this CMP was disposed of on 4th May, 2022 with the following order:

"Undisputedly the Civil Suit involved herein was finally disposed of on 2.12.2021. For the suit being disposed ex parte, there is also submission by both the parties that there is pendency of an application U/o.9 Rule 13 C.P.C. For the view of this Court, unless the suit gets restored, dispute involved herein has no scope for being considered. This Court, accordingly, while disposing of the C.M.P., however, keeps the option of the Petitioner to challenge the order at Annexure-4 open and the same will be dependent on the ultimate outcome in the proceeding U/o.9 Rule 13 of C.P.C."

8. It appears that this Court granted a liberty to the Petitioners to challenge the order dated 4th March, 2020 at Annexure-4 subject to the outcome of the

petition under Order IX Rule 13 CPC filed by the Defendant No.3 to set aside the ex parte decree. No liberty was granted to the Petitioners to seek for restoration of this CMP. Admittedly, the petition under Order IX Rule 13 CPC was allowed vide order dated 22nd September, 2023. Instead of challenging the order dated 4th March, 2020 at Annexure-4 passed in C.S. No.304 of 2019, the Petitioners before this Court filed another application under Order VI Rule 17 CPC before learned trial Court making a prayer for amendment of the written statement to introduce the counter claim. The said application was rejected on the ground that previously an application filed by the Plaintiff for exclusion of the counter claim was allowed vide order dated 4th March, 2020. The Petitioners, thereafter, filed the present I.A for restoration of the CMP instead of challenging the order dated 4th March, 2020, as per the liberty granted.

9. On perusal of I.A. No.308 of 2024, it appears that the Petitioners have not made out any case as to why this application was filed with a delay of almost six months. The Petitioners have only stated in the petition that he had moved learned trial Court by filing similar such application for amendment of the written statement and the same was dismissed vide order dated 1st March, 2024. The Petitioner No.3 has filed CMP No.278 of 2024 assailing the said order. On the very same day, I.A. No.308 of 2024 was also filed without challenging the order dated 4th March, 2020 passed in C.S. No.304 of 2019 pursuant to the liberty granted by this Court while disposing of this CMP. Further the Petitioners have also conveniently omitted to state the date of setting aside the ex parte decree in the present I.A.

10. In that view of the matter, I am not inclined to entertain the I.A.

11. Accordingly, the I.A. stands dismissed.

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

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