
(2023) 09 OHC CK 0053
In the Orissa High Court
Case No : CMP No.1358 Of 2015

Kalyani Debnath

APPELLANT

Vs

Biswajit Mandal And Others

RESPONDENT

Date of Decision : 08-09-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 18 Rule 17

Citation : (2023) 09 OHC CK 0053

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

Bench : Single Bench

Advocate : Debasis Tripathy

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 11th November, 2015 (Annexure-1) passed by learned Civil Judge (Senior Division), Umerkote in C.S. No.04 of 2014 is under challenge in this CMP, whereby an application filed by the Plaintiffs-Opposite Parties for recall of P.W.2 to admit resolution of the U.G. Government High School, Nuaguda in evidence by condoning the delay, has been allowed.
3. Mr. Tripathy, learned counsel for the Petitioner submits that C.S. No.4 of 2014 has been filed for declaration and permanent injunction. After examination of two witnesses on behalf of the Plaintiffs-Opposite Parties, the aforesaid application was filed. Learned trial Court, without considering the objection of the Defendant and without discussing the matter, straightway allowed the application by directing the Plaintiffs to produce the resolution book of the school by 25th
4. It is his submission that while adjudicating the petition, learned trial Court held that the resolution sought to be admitted in evidence was beyond the pleadings. No reason has been assigned as to why P.W.2 should be recalled and

the resolution book should be admitted at a belated stage.

5. The application was allowed by a cryptic and non-speaking order. Hence, this CMP has been filed assailing such order.

6. Although the Plaintiffs-Opposite Parties are represented by learned counsels, none appears on their behalf at the time of call.

7. Considering the submission of Mr. Tripathy, learned counsel for the Petitioner and on perusal of the impugned order under Annexure-1, it appears that no reason has been assigned as to why P.W.2 should be recalled and the Resolution No.13 dated 21st December, 2013 should be admitted in evidence at a belated stage. Law is well settled that power under Order XVIII Rule 17 of CPC should be used sparingly and in cases where the Court feels it necessary to remove any ambiguity in evidence. The discretion under the aforesaid provision should not be used on merely asking for it.

8. It appears that learned trial Court while allowing the application has not kept in mind the requirement of Order XVIII Rule 17 CPC. It further appears that learned trial Court in the impugned order under Annexure-1 has held that the document sought to be introduced in evidence is beyond pleadings.

9. In view of the above, the impugned order under Annexure-1 is not sustainable and is accordingly set aside. Learned trial Court is directed to consider petition filed by the Plaintiffs-Opposite Parties afresh giving opportunity of hearing to the parties concerned and dispose of the same by a reasoned order.

10. With the aforesaid observation and direction, the CMP is disposed of.

11. Interim order dated 2nd November, 2015 passed in Misc. Case No.1389 of 2015 stands vacated.

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

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