

(2022) 06 OHC CK 0092
In the Orissa High Court
Case No : CMP No. 514 Of 2022

Madhusmita Bhoi @ Madhusmita Kharsel APPELLANT
Vs
Hemakanti Kharsel And Others RESPONDENT

Date of Decision : 22-06-2022

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3

Citation : (2022) 06 OHC CK 0092

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

Bench : Single Bench

Advocate : Dinesh Kumar Mohanty

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks for a direction for early disposal of IA No.31 of 2022 (arising out of CS No.140 of 2022) pending before learned Senior Civil Judge, Sambalpur.
3. Mr. Mohanty, learned counsel for the Petitioner submits that the suit has been filed for declaration and permanent injunction. Along with the plaint, plaintiff/ Petitioner has also filed IA No.31 of 2022 under Order XXXIX Rules 1 and 2 CPC with a prayer to restrain the Defendants/Opposite Parties, more particularly Tata Power Western Odisha Distribution Limited (TPWODL), Sambalpur from disbursing retiral dues of the deceased employee, namely, father of the Petitioner to Defendants/Opposite Party Nos.1 and 2. The authorities are going to disburse the amount. The matter involves urgency. Since the Opposite Parties have not entered appearance in the matter, the Petitioner is not in a position to move the IA before the learned trial Court. Hence, this CMP has been filed for the aforesaid relief.

4. Taking into consideration the submission made by learned counsel for the Petitioner, this Court is of the considered opinion that when the IA is not ready for hearing, no direction can be issued for early disposal of the same.

5. Mr. Mohanty, learned counsel for the Petitioner submits that the Defendants/ Opposite Parties have not yet entered appearance in the suit; however, the Plaintiff/Petitioner is ready and will to take out notice on them by special messenger.

6. In view of the above, this Court, without expressing any opinion on the merits of the case of the Petitioner in the IA pending before learned trial Court, disposes of the CMP with a direction that in the event the Petitioner files an application for taking out notices through special messenger, learned trial Court shall do well to allow such application and permit the Petitioner to take out notice through special messenger. Upon service of notices, the Defendants/Opposite Parties, learned trial Court shall do well to take up the application filed under Order XXXIX Rules 1 and 2 CPC at an early date keeping in mind that the Interim Application is filed for temporary injunction.

Issue urgent certified copy of the order on proper application.

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