

(2024) 05 OHC CK 0251
In the Orissa High Court
Case No : CMP No.549 Of 2024

Prafulla Kumar Rout

APPELLANT

Vs

Dukhi Prasad Rout @ Dukhishyam And Others

RESPONDENT

Date of Decision : 21-05-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 43 Rule 1(r)

Citation : (2024) 05 OHC CK 0251

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

Bench : Single Bench

Advocate : Janaki Kanta Mahapatra

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 29th February, 2024 (Annexure-1) passed in CMA No.10 of 2022 is under challenge in this CMP, whereby learned Civil Judge (Senior Division), Banki entertaining an application under Section 151 CPC vacated the order of status quo dated 27th October, 2021 (Annexure-3) passed by the said Court in IA No.01 of 2021 filed under Order XXXIX Rules 1 and 2 CPC.
3. Although the petition was filed under Section 151 CPC, but it was in the nature of an application under Order XXXIX Rule 4 CPC. Thus, the order impugned herein was effectively passed under Order XXXIX Rule 4 CPC, whereby learned trial Court vacating the order of status quo permitted the Opposite Party No.1 to cast the roof subject to the condition that he should abide by the written undertaking dated 23rd November, 2023 filed before the said Court. Thus, the order impugned herein is appealable under Order 43 Rule 1 (r) CPC.
4. As such, this CMP is disposed of with an observation that the Petitioner, if so

advised, may file an appeal against the order impugned herein.

5. Certified copy of the order under Annexure-1 shall be returned to learned counsel for the Petitioner on substitution of attested photocopy thereof.

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